

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA
WASHINGTON, D.C.

FILED

MAY 29 2012

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Vincent Michael Marino
14431-038
FCI McDowell
P.O. Box 1009
Welch, West Virginia
24801

) Civil Action

Case: 1:12-cv-00865

Assigned To : Collyer, Rosemary M.

Assign. Date : 5/29/2012

Description: FOIA/Privacy Act

Plaintiff,

V.

Department of Justice

And its components:

United States Attorneys Office District of Massachusetts ;)

United States Attorney Generals Office;

Executive Office of the United States Attorneys;

Office of Information and Policy Department of Justice;

United States Attorney District of Columbia;

Federal Bureau of Investigation;

Criminal Division Department of Justice;

Office of Enforcement Operations/DOJ;

Defendants.

) Assigned Date _____.

) JURY TRIAL DEMAND

) Description: FOIA/PA/

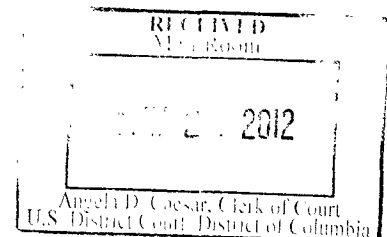
) Sunshine Act Complaint/APA

) Date: May 20th, 2012.

**COMPLAINT FOR DECLARATORY, INJUNCTIVE AND
MONETARY RELIEF**

[1] This is a civil action for Declaratory, Injunctive and Monetary Relief. This Court has jurisdiction pursuant to the Freedom of Information Act ("**FOIA**") 5 U.S.C. Section 552 & Privacy Act ("**PA**") 5 U.S.C. Section 552a and 552a (g) (1), And under the Governments Statutory obligation in the Sunshine Act, 5 U.S.C. Section 552b ("**Sunshine Act**"), order to compel the above Defendants to provide Plaintiff Marino, for public access to its meetings and records, transcripts of meetings concerning Marino, and documents.

The Administrative Procedure Act ("**APA**"), 5 U.S.C. Section 701 et seq., the First, Fourth, Fifth and Ninth Amendments to the Constitution of the United States, and
28 U.S.C. Sections 1391 and 1402. As amended, to order the production of documents from the Defendants/Parties/Agency's.



Plaintiff exhausted his administrative remedies, defendants resisted to hand over documents supporting his actual, factual & legal innocence of the Salemme attempted murder & Count 1 RICO & Count 2 RICO conspiracy & egregious governmental misconduct since 1989 over 23 years.

Parties

[2] **Plaintiff Vincent Michael Marino** is a citizen of the United States and inmate within the Federal Bureau of Prisons/DOJ at FCI McDowell P.O. Box 1009 Welch, West Virginia 24801.

[3] **Defendants Are Components of the U.S. Dep't of Justice:**

[4] **Defendant: U.S. Attorney's Office District of Massachusetts** Dep't of Justice, Suite 9200, 9th Floor U.S. Courthouse 1 Courthouse Way Boston, Massachusetts 02210, served FOIA/PA request cert mail #7010-1670-0001-3727-9290 (Unseal Salemme documents); Cert. Mail #7010-1670-0001-3727-9320 (Inaccurate Record Verdict Sheet).

[5] **Defendant: U.S. Attorney General's Office**, Dep't of Justice, Room 4400, 950 Pennsylvania Ave. N.W. Washington, D.C. 20530, served FOIA/PA request cert. mail #7010-3090-0002-6167-8734 (Unseal Salemme documents); Cert. Mail #7010-1670-0001-3727-9313 (Inaccurate Record Verdict Sheet).

[6] **Defendant: Executive Office of the U.S. Attorney's Dep't of Justice**, Suite 7300, 600 E. Street N.W. Washington, D.C. 20530-0001, served FOIA/PA Cert. Mail #7010-1670-0001-3727-9276 (Unseal Salemme Documents); Cert. Mail #7010-1670-0001-3727-9245 (Inaccurate Record Verdict Sheet).

[7] **Defendant: Office of Information Policy**, Dep't of Justice, Suite 11-50, 1425 New York Avenue N.W. Washington, D.C. 20530-0001, served FOIA/PA request Appeals Cert. Mail #7010-3090-0002-6167-8758 (Unseal Salemme Documents) & (Inaccurate Record Verdict Sheet); Appeals #11-2008.

[8] **Defendant: U.S. Attorney's Office District of Columbia**, 501 3rd St. N.W. Washington, D.C. 20001, served FOIA/PA request Cert. Mail #7010-3090-0002-6167-7911 (Unseal Salemme Documents); Cert. Mail #7010-1670-0001-3727-9283 (Inaccurate Record Verdict Sheet). 555 4th St. N.W. Washington, D.C. 20001 Cert. Mail #7010-3090-0002-6167-8741 (Unseal Salemme Documents); Cert. Mail #7010-1670-0001-3727-9306 (Inaccurate Record Verdict Sheet).

[9] **Defendant: Federal Bureau of Investigation**, Dep't of Justice, 935 Pennsylvania Ave N.W. Washington, D.C. 20530, served FOIA/PA request Cert. Mail #7010-3090-0002-6167-8451 (Unseal Salemme documents) & (Correct Inaccurate Record Verdict Sheet). Feb. 20, 2012.

[10] **Defendant: Criminal Division**, Dep't of Justice, Suite 1127 Keeney Building Washington, D.C. 20530-0001, served FOIA/PA request Cert. Mail #7010-3090-0002-6167-8468 (Unseal Salemme Documents/Correct Inaccurate Verdict Sheet). Feb. 20, 2012.

[11] **Defendant: Office of Enforcement Operations (OEO)**, P.O. Box 7600 Washington, D.C. 20044-7600. Served FOIA/PA request Cert. Mail #7010-3090-0002-6167-8444. Feb. 20, 2012.

Jurisdiction

[12] This Court has jurisdiction over this action under 5 U.S.C. Section 552b (g) and (h) (“The Sunshine Act”) & under 5 U.S.C. Section 552(a)(4)(B) (“The FOIA”) and under 5 U.S.C. Section 552a (“Privacy Act”) and via 28 U.S.C. Section 1331 (Federal Question Jurisdiction).

Moreover defendants, supra never published any of the covert meetings or transcripts of minutes of the meetings concerning Marino. Thus the 60 day time clock does not apply here. See 5 U.S.C. Section 552b (h)(1). The time to file suite is set out in the statute. Actions may be brought prior to, or within sixty days after, the meeting out of which the violation of this section arises, **UNLESS** the agency fails to properly announce the meeting, in which case an action may be filed within 60 days after such announcement, is provided. Title 5 U.S.C. Section 552b (h)(1).

However, the Senate Report clarifies that:

“If an agency (Defendants, supra) provides NO PUBLIC ANNOUNCEMENT AT ALL, the 60 day requirement is inapplicable.

See S.Rep.No.354 at 33, reprinted in the Sunshine Source Book at 228.” Such is the case here in Marino. See United States v. Marino, CR-97-40009-NMG. District of Massachusetts Worcester and Boston.

The Sunshine Act requires that “every portion of every meeting” of a multi-member agency must be “open to the public observation,” with narrow exceptions. 5 U.S.C. Section 552b (b) and (c). Marino requests documents & meetings under the FOIA/PA & Sunshine Act concerning Marino’s cases U.S. v. Marino, CR-97-40009-NMG. D.Massachusetts Worcester & Boston and U.S. v. Marino, CR-97-10026-JLT., District of Massachusetts Boston.

Showing Marino actual innocence, egregious governmental misconduct, due process violations, Brady violations, governmental impediments concerning Marino’s cases and the June 16th, 1989 Salemme attempted murder depicted as predicate racketeering act A-2 in Count One RICO and Count Two RICO conspiracy and the defendants/agencies adding a dismissed during trial of Count 30/Predicate Racketeering Act-B and adding the dismissed Count 30/Act-B cocaine conspiracy back on the verdict sheet dated December 22, 1999 as the jury marked proven on the dismissed Count 30/Act-B in both Counts 1&2 prejudicially against Marino as it adversely affected Marino’s conviction & sentence of Count One RICO sentence to 20 years and Count Two conviction and sentence of 10 years consecutively with each other and with Count Three sentence of 5 years totaling 35 years to serve in prison. With the preclusion of Act-B/Count 30 from Counts One & Two depicted on the verdict sheet of December 22, 1999 would preclude both sentences of 20 and 10 years and convictions of RICO and RICO conspiracy charges as the defendants/agencies in order to convict needs the jury to marked proven on two of more predicate racketeering acts to convict Marino of Count One RICO & Count Two RICO conspiracy. See **Title 18 U.S.C. Section 1961(5)** United States v. Gotti, 451 F.3d 133, 136 (2d Cir.2006), also in support. Thus Marino is actually, factually and legally innocent of Count One RICO and Count Two RICO conspiracy charges. In support see defendants/agencies DOJ

components response dated October 15, 2009 via United States v. Marino, #09-1854 (1st Cir.2009) pages 1-3, 14 in support herein as **EXHIBIT**.

The Sunshine Act also requires agencies to announce publicly the time, place, and subject matter of meetings at least a week before the meeting, 5 U.S.C. Section 552b (e)(1), and to prepare a complete transcript or electronic recording of meetings that are closed for any reason, 5 U.S.C. Section 552b(f).

Agencies/Defendants must also promulgate regulations implementing requirements of the Sunshine Act 5 U.S.C. Section 552b (g)

The defendants held meetings for the purpose of accomplishing the potential out of court settlement concerning AUSA's: Jeffrey Auerhahn & Cynthia Ann Young facilitated **FRAUD** upon the Federal Grand Jury, Suborning perjury testimony from FBI agent Michael Buckley, after agent Buckley received cash payoffs from Stephen "The Rifleman" Flemmi & James "Whitey" Bulger to protect the Salemme, Bulger, Flemmi criminal enterprise, whom the government deemed Marino as its rival. See government's deemed star credible witness Flemmi's September 22, 2008's sworn testimony at FBI agent John J. Connolly's murder trial in Miami Florida which agent Connolly was found guilty of murder. Agent Connolly was agent Buckley's partner. See State of Florida v. (FBI agent) John J. Connolly Jr., criminal action # _____ (Miami, Florida) September 22, 2008's testimony of Stephen "The Rifleman" Flemmi in support. See **EXHIBIT: Boston Globe Sept 23, 2008 B1+B4**.

It is in the **"Public Interest"** that the Defendants/Department of Justice and its components **NOT** commit intentional fraud, misconduct and due process violations against any Citizen of the United States which includes Marino at Trial via United States v. Marino, CR-97-40009-NMG. (D.Mass.Worcester) The defendants egregious misconduct generated Marino's actual, factual and legal innocence of Count One RICO, Count Two RICO conspiracy as the defendants placed a dismissed during trial Count 30 Cocaine conspiracy/Act-B cocaine conspiracy back on the verdict sheet December 22, 1999 and presented to a jury that marked proven on the dismissed Count 30/Act-B cocaine conspiracy predicate racketeering act in both Count One RICO & Count Two RICO conspiracy charged against Marino. Prejudicially against Marino as Marino received an extra 30 years to serve in prison for defendant's intentional misconduct.

EXHIBIT: Indictment Count 30 cocaine conspiracy;

EXHIBIT: Act-B cocaine conspiracy;

EXHIBIT: Docket Entry #581 (Dismissal of Count 30 cocaine conspiracy by government defendants) dated September 28, 29, 1998;

EXHIBIT: Docket Entry Date October 22, 1998 Court's dismissal of Count 30 cocaine conspiracy;

EXHIBIT: Verdict Sheet December 22, 1999 (Showing dismissed during trial of Count 30/Act-B cocaine conspiracy appearing on verdict sheet on 12-22-1999);

EXHIBIT: Sentencing transcript April 13, 2000 showing Marino sentenced to 20 years on Count One RICO, 10 years on Count Two RICO conspiracy and 5 years on Count Three conspiracy to murder all run consecutively with each other. Total of: 35 years.

With the preclusion of dismissed Count 30/Act-B cocaine conspiracy from Counts 1&2 would essentially invalidate Count One RICO conviction and sentence & Count Two RICO conspiracy conviction & sentence because of violations of the double jeopardy clause of the fifth amend. U.S. Const.

Defendants FRAUD upon the district court by Defendants/DOJ & its components: AUSA's: Auerhahn & Young, by presenting dismissed during trial Count 30/Act-B Cocaine Conspiracy back on the "Verdict Sheet" date December 22, 1999, in Count One RICO & Count Two RICO Conspiracy as a predicate racketeering act Act-B, "intentionally" knowing it will adversely affect Marino's due process. As the jury marked "Proven" on the dismissed Count 30/Act-B in both Counts 1&2, adversely affecting Marino, as Marino improperly received an extra 30 years to serve in prison. With the preclusion of the dismissed Count 30/Act-B cocaine conspiracy from the inaccurate verdict sheet in Count One RICO & Count Two RICO Conspiracy charges against Marino would essentially invalidate the conviction & sentences of Count One 20 years, Count Two 10 years, leaving only Count Three conviction & sentence of 5 years, with good time already earned serving 4 years, thus, Marino is "intentionally" **held 13 years over** his term of imprisonment with good time already earned Marino would have equivalent to **17 years** served in prison.

Marino's Actual, Factual and Legal Innocence concerning Count One RICO and Count Two RICO conspiracy charges had the defendants not placed a dismissed during trial Count 30/Act-B back on the verdict sheet Marino would have been released 13 years ago.

The government in order to convict on Count One RICO & Count Two RICO Conspiracy charges the ***jury would have to mark "Proven" on two or more predicate racketeering acts*** to convict Marino according to Statute See **18 U.S.C. Section 1961 (5)** (requiring proof of at least two or more predicate racketeering acts to establish pattern and to convict. 18 U.S.C. Section 1962(c) (RICO) & Section 1962(d) (RICO Conspiracy) & via United States v. Hoyle, 122 F.3d 48 (D.C.Cir.1997); Elements under RICO & RICO Conspiracy are:

1. Existence of enterprise which affects interstate or foreign commerce;
2. That defendant "associated with" enterprise;
3. That defendant participated in conduct of enterprise's affairs; and that participation was through pattern of racketeering activity, i.e., ***by committing at least two or more predicate racketeering acts must be found by a jury to convict.***
See also United States v. Gotti, 451 F.3d 133, 136 (2d Cir.2006).

The jury marked proven only on one other predicate racketeering act A-1 Conspiracy to murder in Counts 1&2. See Verdict Sheet dated December 22, 1999 via: United States v. Marino, CR-97-40009-NMG, in the District of Massachusetts Worcester in support. Generated a core "Public Interest" that Marino receives due process, a fair trial, that the defendants not commit Constitutional Fifth Amendment violations and Marino not be held 13 years over.

The Fifth Amendment states that no person shall be subject for the same offense to be twice put in jeopardy of life or limb. U.S. Const. Amend.V. This Double Jeopardy Clause protects against

both multiple punishments and successive prosecutions for the same offense, regardless of whether a first prosecution resulted in conviction or acquittal.

In the case of successive prosecutions, the critical inquiry is whether the offenses are “the same in fact and in law.”

A multi-factor test used for determining whether successive racketeering charges in fact present distinct patterns of racketeering activity for purposes of double jeopardy. Under this test, a Court properly considers:

1. *The time of the various activities charged as part of separate patterns; (Same dates as in Marino Count 30 and Act-B cocaine conspiracy);*
2. *The identity of the persons involved in the activities under each charge; (Same identities charged in Count 30 & Act-B in Marino);*
3. *The statutory offenses charged as racketeering activities in each charge; (both Count 30 and Act-B cocaine conspiracy charges Statutory violations of 21 U.S.C. Sections 841(a)(1) and 846 in Marino);*
4. *The nature and scope of the activity the government seeks to punish under each charge; (Same conspiracy Count 30/Act-B in Marino, as defendants stipulated in **EXHIBIT**: on October 15, 2009 via U.S. v. Marino, #09-1854 (1st Cir.2009) pages 1,2,3, & 14. in support herein.*
5. *The places where the corrupt activity took place under each charge; (same places Count 30/Act-B charges in Marino).*

These factors are sufficiently comprehensive to warrant review of the totality of the circumstances, which comports with the overall approach to double jeopardy review.

Double jeopardy precludes successive prosecutions for conducting the affairs of the same Enterprise through the same pattern of racketeering. For successive substantive racketeering prosecutions to place a defendant twice in jeopardy for the same offense, both the enterprise and the pattern of the racketeering activity are issue in the two cases must be the same (as seen in Marino) “[i]f either is different, there is no infirmity under the double jeopardy clause.” United States v. Russotti, 717 F.2d at 33, (emphasis in original).

The patterns alleged by the defendants/government/DOJ components in Count 30 cocaine conspiracy and predicate racketeering Act-B cocaine conspiracy are factually the same. Plaintiff Marino is “actually innocent of engaging in pattern of racketeering activity.” What that means, is just did the defendant/Plaintiff Marino commit two of more racketeering acts related to the enterprise described in United States v. Marino, CR-97-40009-NMG. (D.Mass.Worcester).

But pattern is an essential element of racketeering. Once a grand jury has charges a pattern of racketeering common to a number of defendants, only the grand jury, not the court government/defendants, may decide whether an individual (Marino) defendant then Plaintiff now should be charged with a different pattern after co-defendants have pleaded guilty. See generally U.S. v. Stirone, 361 U.S. 212, 217, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960) (reversing conviction after government altered element of offense, observing that “neither this or any other court can know that the grand jury would have been willing to charge” defendant on new theory); U.S. v.

Salmonese, 352 F.3d 608, 620 (2d Cir.2003) (observing that constructive amendment occurs where proof at trial or jury instructions ‘so altered an essential element of the charge that, upon review, it is uncertain whether the defendant was convicted of conduct that was subject of the grand jury’s indictment” (internal quotations marks omitted).

The Freedom of Information Act Request

[13] **Title 5 U.S.C. Section 552(a) (1)** of the FOIA requires each executive branch agency to publish a number of items in the Federal Register, including the agency’s “rules of procedure, substantive rules of general applicability” and the employees “from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions” **5 U.S.C. Section 552(a)(1)**, concerning Plaintiff Marino as described in U.S. v. Marino, CR-97-40009-NMG. (D.Mass.Worcester & Boston); U.S. v. Marino, # CR-97-10026-JLT., District of Massachusetts Boston.

5 U.S.C. Section 552(a)(2) of the FOIA requires agencies “Defendants supra” to make available for public inspection and copying a number of records, including all “administrative staff manuals and instructions to staff that affect a member of the public,” (Plaintiff Marino) and “final opinions of the agency. **5 U.S.C. Section 552(a)(2)**, concerning the June 16, 1989 Salemme attempted murder charges in predicate racketeering act A-2 in Count One RICO and Count two RICO conspiracy. See U.S. v. Marino, CR-97-40009-NMG, district of Massachusetts Worcester and Boston and issues in U.S. v. Marino, CR-97-40009-NMG., (D.Mass.Worcester and Boston). U.S. v. Marino, CR-97-10026-JLT., (D.Mass.Boston).

5 U.S.C. Section 552(A) (3) of the FOIA authorizes members of the public to submit requests for other agency records concerning (Plaintiff Marino, supra) in order to facilitate the exercise of this right, the FOIA requires agencies to publish in the Federal Register, following public notice and comment, regulations specifying the schedule of fees applicable to the processing of FOIA requests and guidelines for determining whether fees for such requests should be waived or reduced. **Title 5 U.S.C. Section 552(a)(4)(A)**. Concerning: U.S. v. Marino, # CR-97-40009-NMG. (District of Massachusetts Worcester and Boston); U.S. v. Marino, # CR-97-10026-JLT. (District of Massachusetts Boston).

The Defendants/Agencies has failed to promulgate any of the regulations required by the FOIA or make available to the public any materials described supra concerning Marino.

Plaintiff Marino Requests Defendants/Agencies Supra Give Marino a Detailed Letter Explaining the Defendants/Agency’s on going Violations of the Sunshine Act and the FOIA

[14] This court has additional jurisdiction over this action pursuant to **Title 5 U.S.C. Section 552(a) (4) (B)**.

Marino's Actual, Factual and Legal Innocence of the June 16, 1989

Salemme attempted murder

Depicted as predicate racketeering act A-2 in Count One RICO & Count Two RICO Conspiracy, and issues concerning in U.S. v. Marino, # CR-97-10026-JLT. (D.Mass. Boston)(Defendants witness Charles McConnell served as a governmental informant during the alleged conspiracy charging Marino with conspiring with McConnell to purchased 5 kilo grams of cocaine thus not a genuine conspiracy proving Marino's actual innocence of that charge:

is of **"Public Interest"** that Marino receives Due Process and a fair trial.

The defendants Glomar response, neither confirming nor denying whether it had records concerning Marino's actual innocence of the Salemme attempted murder and of Marino's conviction of Count One RICO & Count Two RICO Conspiracy conviction and sentence of total 30 years, under FOIA Exemption 7(C), which permitted agencies to withhold information contained in law-enforcement records to protect against unwarranted invasions of personal privacy.

However in Marino, the public had an interest in knowing whether the federal government was withholding information that could corroborate Marino's claim of innocence, and that interest outweighed the privacy interest of **deceased and publicly known informant:** Angelo "Sonny" Mercurio, **publicly known informant** James "Whitey" Bulger charged with 19 murders and **publicly known informant** Stephen "The Rifleman" Flemmi charged with and admitted to 20 murders privacy interest in having the defendants not disclose whether it had information linking them to the June 16, 1989 Salemme attempted murder described in under seal documents in U.S. v. Salemme, 91 F.Supp.2d 151, 153, 171, 174, 219, 261-311 (D.Mass.1999). See also U.S. v. Connolly (FBI agent) 341 F.3d 16 (1st Cir.2003); State of Florida v. John J. Connolly Jr. (FBI agent) criminal action #____ (Miami, Florida Sept. 22, 2008). Government's deemed star credible witness Flemmi's testimony. Agent Connolly convicted of murder (State case) & Racketeering (Federal case) in both State & Federal Courts serving 10 years federal & 40 years state conviction for murder.

Weighing the competing interests, the balance tilted decidedly in favor of disclosing whether the Defendants files contained such information which was placed under seal via Salemme, supra and whether that information shows governmental misconduct, Brady violations of exculpatory material evidence that may have proven Marino's actual, factual & legal innocence generating a **"PUBLIC INTEREST"** that Marino receive a fair trial & due process and that the government NOT intentionally conceal that evidence.

See Roth v. Department of Justice United States Court of Appeals For The District of Columbia 642 F.3d 1161; 2011 U.S. App. LEXIS 13124 No. 09-5428 Decided June 28, 2011, in support.

The Freedom of Information Act (FOIA), 5 U.S.C.S. Section 552, requires every federal agency, upon request, to make promptly available to any person any records so long as the request reasonably describes such records. 5 U.S.C.S. Section 552(a)(3)(A). The Act reflects a general philosophy of full agency disclosure.

It is in the Public Interest that the defendants/DOJ and its components not commit egregious misconduct in the Marino case and that Marino receive all exculpatory material Brady evidence that may show Marino's actual innocence, governmental/Defendants misconduct, Brady violations concerning the June 16, 1989 Salemme attempted murder which may show that FBI Top Echelon informants Mercurio, Flemmi, Bulger & convicted of murder former FBI agent Connolly and informants Mele & Laface may be culpable in the Salemme attempted murder facilitating systemic institutional intentional defendants misconduct held over 22 years since June 16, 1989. *See concealed 4 Tapes Underseal Transcription*

Exhibit: Request/Approval Sheet File # 281B-BS-65373

It is in the **public interest** that the following be exposed concerning the defendants historic and current egregious misconduct in the Marino case:

The Following Documents have been intentionally concealed from Marino by the Defendants/Agency that Shows Egregious Gross Governmental Misconduct/Brady Violations Concerning Marino's Criminal Case via: United States v. Marino, CR-97-40009-NMG. (District of Massachusetts Boston & Worcester) which may lead to Marino's Actual, Factual & Legal Innocence of predicate racketeering act A-2 The June 16, 1989 Salemme attempted murder depicted in Count One RICO and Count two RICO Conspiracy charges against Marino

[15] More specifically Plaintiff Marino requested the **(Under Seal Documents) described in U.S. v. Salemme, 91 F.Supp.2d pages 267-269 (Under Seal), 263 (D.Mass.1999)** which shows that FBI publicly known informants Angelo "Sonny" Mercurio, James "Whitey" Bulger & Stephen "The Rifleman" Flemmi called Salemme to a location in June 16, 1989 to be shot while all three informants worked for convicted FBI agent Connolly. See **Salemme, 91 F.Supp.2d pages 263 (D.Mass.1999)** in support, also showing that FBI agent Connolly instigated the June 16, 1989 Salemme attempted murder, **Salemme, 91 F.Supp.2d Page 311.**

Additionally under seal documents shows that agent Ring described other reliable informants that stated that informant Mercurio played a central role in the June 16, 1989 Salemme attempted murder as well as other core exculpatory material Brady evidence.

See **EXHIBIT:** FBI agent Steffens Affidavit dated October 27, 1989 In Support of Application For Electronic Surveillance Order Docket # MBD #89-1015 United States District Court District of Massachusetts/Boston see pages 1, 13-26, & 73, showing that CS-1 Mercurio, CS-2 Flemmi, CS-3 & CS-4 describing Mercurio as setting up the June 16, 1989 Salemme attempted murder by calling Salemme to a Saugus Massachusetts Pancake House to be assassinated.

While Mercurio worked as a Top Echelon FBI informant for agents Connolly, Buckley, Ring & AUSA: Kottmyer, then Chief of the New England Organized Crime Strike Force, that was concealed by the government AUSA's Auerhahn & Young from the investigating grand jury in April 4, 1997, which indicted Marino & Ponzio for the Salemme attempted murder depicted as predicate racketeering act A-2 in Count One RICO & Count Two RICO Conspiracy which Marino was found **NOT PROVEN** beyond a reasonable doubt by a jury in both Counts 1&2.

See **Exhibit:** Verdict Sheet December 22, 1999, via United States v. Marino, CR-97-40009-NMG., District of Massachusetts Worcester.

However the Court and government dramatically *enhanced Marino on April 13, 2000, sentence an extra 20-25 plus years* to serve in prison under the preponderance of the evidence an extra 8 Offense Levels from Offense Level 28 & Criminal History Five to Offense Level 36 Criminal History Five from 130 months-162 months to 420 months sentence.

Exhibit: April 13, 2000, Sentencing Transcript pages 1, 20-24 via United States v. Marino, CR-97-40009-NMG.

The Defendants/Agencies Department of Justice & its components/ government AUSA'S: Auerhahn & Young **"Intentionally"** precluded the above concealed core exculpatory material Brady evidence fraudulently from the grand jury in 1997, two trials jurors in 1998 & 1999, from Marino & from Judge Gorton, had the egregious misconduct that is placed under seal described supra presented to Judge Gorton there is both a reasonable & actually probability of a different result much more favorable to Marino.

[16] I specifically request a search of your agency's *Central Records Systems (CRS)*; *Automated Case Support System (ACSS)*; *Electronic Case Files (ECF)*; *Universal Index Files (UIF)*; *Legal Attaches (Legats)*; also *Investigative Case Management Systems (ICMS)*; *Confidential Source System (CSS)*; and the **"I-Drive System."** Any **"main"** and/or **"references"** to Marino or aliases Vincent Michael Portalla, (aka) Gigi, would be responsive to this request.

All of my personal information is provided in this FOIA/PA request & concerning the June 16, 1989 Salemme attempted murder which shows governmental misconduct that was precluded **from** Judge Gorton, **from** Marino, **from** the 1997 grand jury, **from** the 1998 jury trial, **from** the 1999 jury trial, **from** all of Marino's post conviction appeals, supra. If your agency needs further information to fulfill this request please contact, **Marino** at the provided address herein.

Background & Memorandum of Law in Support

[17] Defendants **Glomar response** to Plaintiff Marino's sought review of sealed documents described in U.S. v. Salemme, 91 F.Supp.2d 267-269 (**Under Seal**) (D.Mass.1999) FOIA/PA, 5 U.S.C.S. Sections 552 & 552a, record request. Which contains Exculpatory material Brady evidence and egregious governmental misconduct that if handed over to Plaintiff Marino could exonerate him and also that it is in the **Public Interest** that Marino receive due process and for the government not to commit intentional misconduct by instigating and fomenting violence the June 16th, 1989 Salemme attempted murder and the June 1989 Grasso murder with the support of **Publicly Know Informants & Serial Killers:** Angelo "Sonny" Mercurio, James "Whitey" Bulger & Stephen "The Rifleman" Flemmi and convicted FBI agent John J. Connolly Jr. See also U.S. v. Connolly (FBI agent), 341 F.3d 16 (1st Cir.2003); State of Florida

v. John J. Connolly Jr. (FBI agent), Criminal Action # _____ (Miami, Florida September 22, 2008) testimony of Flemmi stating that he & Bulger paid off FBI agents Connolly & Michael J. Buckley with criminal; profits to protect Flemmi, Bulger & Salemme's criminal enterprise.

Or in the alternative for this Court to review the concealed documents described supra for an "In Camera Review" to ascertain whether the concealed under seal documents contain exculpatory material Brady evidence, egregious governmental misconduct and may exonerate Marino, and that it is in the "Public Interest" that Marino receive due process and a fair trial via: United States v. Marino, CR-97-40009-NMG., District of Massachusetts Worcester & Boston. The defendant's Glomar response was overcome by the Plaintiff Marino's showing that a reasonable person could believe that the defendants:

Department of Justice and its components:

- **United States Attorneys Office District of Massachusetts**
- **U.S. Attorney Generals Office**
- **Executive Office of the United States Attorney**
- **Office of Information Policy**
- **U.S. Attorneys Office District of Columbia**
- **Federal Bureau of Investigation**
- **Criminal Division**
- **Office of Enforcement Operations**

Defendants/Agencies DOJ and its components Intentionally withheld core exculpatory material Brady evidence from Marino from 1998 jury trial, from 1999 jury trial, from Court Judge Gorton, and defrauded the 1997 federal grand jury concerning the June 16, 1989 Salemme attempted murder charged against Marino and placing back on the December 22, 1999 verdict sheet dismissed during trial Count 30/Predicate Racketeering Act-B cocaine conspiracy in Count One RICO & Count Two RICO conspiracy which adversely affected Marino as Marino received an extra 30 years to serve in prison as Marino is actually innocent of Count 1&2

conviction and sentence of 30 years generated a core “Public Interest.” Requires this courts review.

An appellate court’s review of a district court’s summary judgment decision is de novo.

Defendant’s records are not law enforcement records under Freedom of Information Act (FOIA), 5 U.S.C.S. Section 552, simply by virtue of the function that the defendants & FBI serves. For example, records the FBI and defendants compiles regarding a job applicant may fall outside the scope of FOIA Exemption 7(C). Furthermore, Exemption 7 (c) would have no applicability to information obtained in an illicit intelligence-gathering operation.

See Marino v. CIA, et al., civil action #11-cv-813-RMC. (Washington, D.C. 2011); Marino v. Gammel, 191 F.Supp.2d 243-257 (D.Mass.Boston 2002).

Plaintiff Marino bears the burden and has clearly met the burden of showing (1) that the public interest in this case sought to be advanced is a significant one, and interest more specific than having the information for its own sake, and (2) that the information he seeks is likely to advance that interest. The individual prosecutor or government lawyer has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in this case Marino, including the police, agents, agencies and defendants supra.

In determining whether withheld evidence is material for purposes of Brady, a court should consider whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

Court with the urging of the government representatives AUSA’s: Auerhahn & Young enhanced Marino’s sentence an extra 8 offense levels which is equivalent to serving an extra 20-25 years for the June 16, 1989 Salemme attempted murder depicted in Count One RICO & Count Two RICO Conspiracy even though the jury found that charge **NOT PROVEN** beyond a reasonable doubt in both Counts 1&2.

Government intentional misconduct by concealing and placing under seal documents described in Salemme, 91 F.Supp.2d pages 267-269 (**Under Seal**) (D.Mass.1999) which may prove Marino’s actual, factual and legal innocence concerning the Salemme attempted murder and also concededly proves egregious governmental misconduct, Brady violations, Due Process Violations, selective prosecution, all generating a genuine **“Public Interest”** that the government obey the laws, not conceal exculpatory material evidence, not violate due process, not instigate and foment violence and grant Marino a fair trial. See related cases:

United States, v. Connolly (FBI agent), 341 F.3d 16 (1st Cir.2003); State of Florida v. John J. Connolly, Jr. (FBI agent), criminal action #_____ (Miami, Florida September 22, 2008) agent Connolly convicted of murder was partners with FBI agent Buckley whom fraudulently testified against Marino in 1997 grand jury, 1998 jury trial, 1999 jury trial and handled now under congressional investigation Mark Rossetti a Bulger, Salemme, Flemmi triggerman also publicly known FBI informant even though he is suspected in more than 6 murders.

See **EXHIBIT**: The Boston Globe, Tuesday, October 18, 2011 METRO section page B1 by Kevin Cullen Pants on fire. Article shows: Senator Charles Grassley requesting government

oversight and hearings concerning “Whitey Bulger/Boston FBI like fiasco” agents protecting serial killer informants as the public records so supports.

Note all of the Top Echelon FBI informants Mercurio (Dead), Bulger, Flemmi, are all **publicly known informants** depicted in numerous Court public known documents, newspapers, etc. All are also charged with both historic & current extremely violent serial acts of murder while all were protected by the Boston FBI, thus Exemption 7(c) not applicable, no privacy interest implicated. The mere fact that records fall within a FOIA exemption provides no justification for failing to acknowledge their existence.

Overview

The United States Court of Appeals for the District of Columbia Circuit has made clear that the potential availability of criminal and civil discovery in no way bars an individual (Marino) from obtaining information through the FOIA, 5 U.S.C.S. Section 552, where no exemption otherwise applies. Indeed, there are situations in which FOIA will permit access to information that would not be available through discovery.

Under the United States Court of Appeals for the District of Columbia Circuit case law, agencies invoking a FOIA, 5 U.S.C.S. Section 552, exemption must provide a specific, detailed explanation of why the exemption applies to the **withheld Salemme materials**.

Reviewing documents in camera is no substitute for the government’s obligation to provide detailed public indexes and justifications whenever possible. Requiring agencies to provide public explanations for their redactions allows for adversarial testing of the agencies’ claims, which helps focus the court’s attention on the most important issues in the litigation and may reveal not otherwise apparent flaws in the agencies’ reasoning. That said, the District of Columbia Circuit has recognized that there are occasions when extensive public justification would threaten to reveal the very information for which a FOIA exemption is claimed. Although in such a case an agency is still required to provide as much public explanation as it can without giving away the information it is trying to withhold, it may supplement its explanation by making the documents available for in camera review.

Under 5 U.S.C.S. Section 552(b), any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

According to National Archives & Records Administration v. Favish, 541 U.S. 157, 158 L.Ed.2d 319, 124 S.Ct. 1570 [No. 02-954] Decided March 30, 2004, concluded that (1) the public has an interest in knowing whether the federal government is withholding information that could corroborate inmate Marino’s claim of innocence, and (2) that interest outweighs the privacy interest of three **publicly known** Top Echelon FBI informants admitted killer Mercurio **now deceased**, Bulger now charged with more than 19 murders, Flemmi admitted to 20 murders and now a governmental deemed credible witness and serving 10 life sentences, FBI agent Connolly now convicted of murder and being part of the Salemme, Bulger, Flemmi criminal

enterprise, see U.S. v. Connolly, 341 F.3d 16 (1st Cir.2003), three men Mercurio, Bulger & Flemmi not disclosed to the federal grand jury in 1997, 1998 jury trial, 1999 jury trial against Marino. The government precluded any evidence linking them to the June 16, 1989 Salemme attempted murder which Marino was found NOT PROVEN beyond a reasonable doubt concerning predicate racketeering act A-2 Salemme attempted murder depicted in Count One RICO & Count Two RICO conspiracy, however the Court with the urging of the government substantially enhanced Marino sentence 8 Offense Levels which is equivalent to Marino serving an extra 20-25 years more in prison for the June 16, 1989 Salemme attempted murder prejudicially against Marino thus invoking a core “Public Interest” in the Marino case as stated supra. Thus, that interest outweighs the four men’s Bulger, Flemmi, Mercurio, Connolly’s privacy interest linking them to the June 16, 1989 Salemme attempted murder and other egregious gross governmental misconduct that affects Plaintiff Marino’s due process. Thus, the defendants Glomar response is null and void and not applicable here in Marino.

“FOIA requires every federal agency, upon request, to make ‘promptly available to any person’ any ‘records’ so long as the request ‘reasonably describes such records.’” Assassination Archives & Research Ctr. v. CIA, 334 F.3d 55, 57, 357 U.S. App. D.C. 217 (D.C. Cir.2003) (quoting 5 U.S.C. Section 552(a)(3)(A)).

FOIA/PA its purpose is to protect the citizens’ right to be informed about what their government is up to. Thus generating a core **“Public Interest”** in Marino.

Plaintiff Marino convicted of RICO, RICO conspiracy and Conspiracy to murder offenses seeks records that he claims ***might reveal multiple Brady-related misconduct*** suffice to show a pattern of government wrongdoing as could overcome the significant privacy interest at stake.

[18] **Defendants/Agencies DOJ and its components: AUSA: Auerhahn’s** pattern of repeated **“intentional”** misconduct which is deemed a felony See United States v. Ferrara, 384 F.Supp.2d 384 (D.Mass.2005), Chief Judge Wolf found that Assistant U.S. Attorney Jeffrey Auerhahn **“intentionally”** engaged in professional misconduct which required the release from prison of Ferrara. Judge Wolf also found that Mr. Auerhahn’s testimony in 2003 while under oath may have been perjurious. Id., at 397 n.10. The Ferrara decision formalized and amplified findings that Judge Wolf made on October 3, 2003, in the companion case of United States v. Barone, which led to Mr. Barone, being released later that month from a life sentence, with the agreement of the government. The First Circuit affirmed Wolf’s decision in Ferrara, characterizing Mr. Auerhahn’s actions as **“Egregious,” “outrageous,” “feckless,”** and as **“paint[ing] a grim picture of blatant misconduct.”** United States v. Ferrara, 456 F.3d 278, 291, 293 (1st Cir.2006).

Note: AUSA: Auerhahn prosecuted Marino & also “intentionally” Defrauded and with held crucial exculpatory material evidence from the 1997 grand jury, 1998 trial & 1999 trial, from Judge Gorton & from Marino without any transparent corresponding accountability. Now Defendants/Agencies/DOJ and its components: AUSA’s: James Herbert & Michael Tabak inherited AUSA’S: Auerhahn’s & Young’s **“intentional”**

misconduct that violates criminal statutes & ethical codes of conduct described in: The Massachusetts Rules of Professional Conduct, DR 7-103(B) stated in the period 1991-1998 that:

“A public prosecutor or other government lawyer/**Defendants/DOJ and its components** in criminal litigation shall make timely disclosure to counsel for the defendant (Marino & Ponzo), or to the defendant Marino, if he has no counsel, of the existence of evidence: (Salemme, 91 F.Supp.2d pages: 267-269 (D.Mass.1999)) (*Under Seal*)

State of Florida v. (FBI agent) Connolly, Sept. 22, 2008 Flemmi’s testimony stating he paid off FBI agents Buckley & Connolly before **agent Buckley** testified against Marino & Ponzo at the 1997 federal grand jury via U.S. v. Marino, CR-97-40009-NMG. District of Massachusetts Worcester & Boston.

U.S. v. Connolly, 341 F.3d 16 (1st Cir.2003), agent Connolly part of the: Salemme, Bulger & Flemmi criminal enterprise protecting it & giving inside information against its enemies. Which proved Marino’s actual innocence, Brady violations, governmental/defendants/agencies DOJ and its components intentional egregious misconduct requires a “Public Interest” and due process.

[19] Marino’s Double Jeopardy issues described in pending **docket entry #1357 & 1364** showing Marino held 11 years over unlawfully) for close to 2 years.

known to the Defendants/Agencies/DOJ and its components: prosecutors: (AUSA’s: Auerhahn, Young, **Herbert & Tabak**, Kottmyer (now a state judge), that tends to negate the guilt of the accused (Marino & Ponzo), mitigate the degree of the offense, or reduce the punishment concerning the June 16th, 1989 **Salemme attempted murder** depicted as predicate racketeering act A-2 in counts One RICO & Count Two RICO Conspiracy charged against Marino & Ponzo.”

Known to the Defendants/DOJ and its Components

And Double Jeopardy 5th Amendment violations via the government’s September 29, 1998 moved to dismiss Count 30/Act-B Cocaine Conspiracy during the first trial **1998**

EXHIBIT: Docket Entry # 581 & Judicial announcement dismissing Count

Thirty/Predicate Act-B Cocaine Conspiracy charge on **EXHIBIT: Docket Entry Date:**

October 22, 1998 & then placing it back on the verdict sheet App. # 17 December 22, 1999 United States v. Marino, CR-97-40009-NMG. (D.Mass.Worcester), after its dismissal by both the government & the Court fraudulently prejudicially causing Marino to receive an extra 30 years to serve in prison as the **jury marked “Proven” on the dismissed predicate racketeering Act-B** in Counts One & Two.

With the preclusion of predicate Act-B from the **EXHIBIT:** verdict sheet App. # 17, (December 22, 1999), would invalidate Count One RICO conviction & sentence of 20 years & Count Two RICO Conspiracy conviction & sentence of 10 years both ran consecutively after each other totaling 30 years for Marino to serve in Prison in violations of the 5th Amendment’s Double Jeopardy Clause protections & Marino’s due process. Count Three Marino received an additional

5 years on and after the 30 year sentence in Counts 1&2, supra, totaling 35 years to serve in prison.

See Public Recorded Exhibits in Support Herein

EXHIBIT: Verdict Sheet Appendix #17, December 22, 1999 U.S. v. Marino, CR-97-40009-NMG. (District of Massachusetts Worcester)

EXHIBIT: Indictment Count 30, page 69, U.S. v. Marino, #CR-97-40009-NMG. (District of Massachusetts Worcester)

EXHIBIT: Indictment Predicate Racketeering Act-B, page 14, U.S. v. Marino, #CR-97-40009-NMG. (District of Massachusetts Worcester)

EXHIBIT: Docket Sheet docket entries #581 & Docket Date 10-22-1998 See United States v. Marino, CR-97-40009-NMG. (District of Massachusetts Worcester/Boston)

EXHIBIT: AUSA: Young's stipulating to all of Marino's elements of the double jeopardy violations see United States v. Marino, #09-1854 (1st Cir.2009) *government's Response dated October 15, 2009 pages 1-3 & 14* in support attached herein.

[20] The rules also included "standards Relating to the Prosecution Function" which in PF 7(A), reiterated this requirement. In addition, PF 1 provided that,

"It is unprofessional conduct for a prosecutor (Defendant's/DOJ and its components) not to

Intentionally misrepresent matters of fact or law to the Court (Judge Gorton or to this Court)."
*Had judge Gorton known about the above egregious defendants/agencies/DOJ and its components egregious misconduct judge Gorton would not have enhanced Marino's sentence an extra 8 offense levels under criminal history 5 from 130 months to 420 months sentence by the preponderance of the evidence for the June 16, 1989 Salemme attempted murder even though the jury marked **NOT PROVEN BEYOND A REASONABLE DOUBT** in predicate racketeering act A-2 against Marino in both Count One RICO & Count Two RICO Conspiracy thus there is a reasonable probability of a different result much more favorable for Marino had the above egregious misconduct not occurred in the Marino case requiring a **substantial Public Interest** that Marino receive due process and that the documents be unsealed and handed over to Marino concerning U.S. v. Salemme, 91 F.Supp.2d pages 267-269 (D.Mass.1999).*

Note the current counter-parts of the relevant standards are in Rule 3:07 of the Massachusetts Rules of Professional Conduct, including Rules 3.4(a) and 3.8(d). Now

Defendants/Agencies/ DOJ's and its components: AUSA's: Herbert & Tabak are armed with the above egregious misconduct that AUSA's: Auerhahn & Young has **"intentionally"** created & left them with to handle.

See: 610 F.Supp.2d 153 (D.Mass.Boston) Chief Judge Wolf's complaint against AUSA: Auerhahn for his ***"Intentional Professional Misconduct," Showing a clear pattern by AUSA: Auerhahn's continuous "intentional misconduct."***

Additionally requires prosecutor's compliance with the Hyde Amendment & 28 U.S.C. Section 530 B, the Ethical Standards for Prosecutors Act or that otherwise implicates professional responsibility concerns. Defendants/Agencies/DOJ and its components:

Defendants/Agencies/DOJ and its components: Government (AUSA's: Herbert & Tabak) must show "a particularized need to continue withholding the information described in Salemme, 91 F.Supp.2d pages 267-269 (D.Mass.1999) placed **(Under Seal)** by the government showing egregious governmental misconduct concerning the June 16, 1989 Salemme attempted murder, that FBI agent Connolly instigated & fomented the violence, that FBI Top Echelon informants Mercurio, Bulger & Flemmi played a central role in the Salemme attempted murder, that other concealed by the government informants identified Mercurio as setting up Salemme to be shot on June 16, 1989, all withheld from the 1997 grand jury, from 1998 jury trial, from 1999 jury trial, from Judge Gorton, from Marino & from all of Marino's post conviction appeals **"intentionally"** by the government (AUSA's: Auerhahn & Young)

Defendants/Agencies/DOJ and its components: FBI agent Walter Steffens Affidavit

[21] Via: **EXHIBIT:** In the Matter of the Application of the United States for an order authorizing the interception of oral communications M.B.D. No. 89-1015 dated October 27th, 1989 pages 1, 13-26, 73. Showing that the government was in possession of reliable information that shows other informants stated that Mercurio played a central role in the June 16, 1989 Salemme attempted murder. Mercurio is described as CS-1 & Flemmi is described as CS-2 in agent Steffens affidavit.

Defendants/Agencies DOJ and its components: AUSA's: Auerhahn & Young & FBI agent Buckley was armed with this information in 1989

Long before Defendants/Agencies/DOJ and its components: AUSA: Auerhahn seek to indict Marino & Ponzo for the June 16, 1989 Salemme attempted murder, thus committing fraud upon the 1997 grand jury, 1998 & 1999 jury trials & upon Judge Gorton & through all of Marino's post conviction appeals **"INTENTIONALLY."** See Salemme, 91 F.Supp.2d 151, 153, 171, 174, 219, 261-311 (D.Mass.1999), in support.

Example, the Defendants/Agencies/DOJ and its components were in possession of core exculpatory material Brady evidence and governmental egregious misconduct which proves Marino's actual innocence of the June 16th, 1989 Salemme attempted murder: On August 2, 1989, another informant who agent

Ring regarded as highly reliable advised that Mercurio played a central role in the Salemme shooting. See Concealed & **under seal Exhibits 188, 194, 234, 237, 246**; agent Ring's testimony June 16, 1998, Tr. at 55 (under seal). The informant stated among other things that Mercurio fled after the shooting because he had lured Salemme to the meeting at which the attempt on his life was made. Salemme, 91 F.Supp.2d 268, (Under Seal). Marino seeks the above sealed documents and requests that they be unsealed and handed over to Marino.

& NOW "intentionally" by Defendants/Agencies/ DOJ and its components two new prosecutors AUSA's: James Herbert & Michael Tabak.

See Schmerler v. FBI, 696 F.Supp. 717 (D.D.C.1988)

For the Record Marino requests the above described documents & that the United States **Defendants/DOJ and its components** United States Attorney Carmen Ortiz & AUSA's: James Herbert, Michael Tabak, Jeffrey Auerhahn & Cynthia Ann Young perform corrective action to preserve the integrity of the **Defendants/Agencies/DOJ and its components: United States Department of Justice**.

"The public interest in seeing that [the plaintiff in FOIA case Marino's] due process rights are protected in his criminal case is significant." Butler v. DOJ, # 86-2255 (D.C. Circuit February 3, 1994).

In general, "FOIA rights are unaffected by the requester's (Marino's) involvement in other litigation; and individual (Marino) may therefore obtain under FOIA information that may be useful in non-FOIA litigation, even when the documents sought could **NOT** be obtained through discovery." Salemme, 91 F.Supp.2d pages 267-269 (D.Mass.1999) (**Under Seal**), concerning the June 16, 1989 Salemme attempted murder depicted as predicate racketeering act A-2 in Count One RICO & Count Two RICO Conspiracy charged against Marino & Ponzo via United States v. Marino, CR-97-40009-NMG. District of Massachusetts Worcester and Boston. See North v. Walsh, 881 F.2d 1088, 1099 (D.C.Cir.1989).

Certain differences between the FOIA & the rules of criminal & civil discovery may, in some cases, make the FOIA an attractive alternative or adjunct to civil & criminal discovery. McGehee v. CIA, 697 F.2d 1095, 1110 (D.C.Cir.1982), thus, an agency process for referring documents to other agencies which will substantially delay processing of the request constitutes "withholding" under FOIA'S jurisdictional provisions, Id.

Once Marino proves misconduct in the June 16, 1989 **Salemme attempted murder** & his Double Jeopardy violations the results there is both a reasonable & actual probability of a different result much more favorable to Marino such as the preclusion of the 8 offense level enhancement for the Salemme attempted murder that the government recommended & the court granted which equals 20-25 plus years enhancement by the preponderance of the evidence even though:

The jury found predicate racketeering act A-2 NOT PROVEN beyond a reasonable doubt in count One (RICO) & Count Two (RICO Conspiracy) charges Against Marino on December 22, 1999 Jury Verdict as it is in the *public interest* for Marino to receive due process

[22] With the preclusion of the 8 offense level enhancement for the Salemme attempted murder see government & judicial enhancements by the preponderance of the evidence even though the jury found predicates racketeering act A-2 **NOT PROVEN beyond a reasonable doubt** in Count One RICO & Count Two RICO Conspiracy charges against Marino see (*Sentencing Transcript pages 1, 20-24 April 13, 2000*) because of egregious governmental misconduct described in the Sealed Documents in Salemme, 91 F.Supp.2d pages **267-269 (Under Seal)**

(D.Mass.1999), places Marino in Offense Level 28 Criminal History 5 at 130-162 months, Marino has already served 15 years **NOT** counting good time already earned which is equivalent to Marino serving a 17 plus year sentence already served unlawfully. Had Judge Gorton been handed over the above concealed by the defendants/Agencies/DOJ and its components under seal documents showing egregious gross governmental of defendants/agencies/DOJ and its components, intentional Brady violations, defendants impediments, and documents **showing Marino's actual, factual & legal innocence of the June 16, 1989 Salemme attempted murder** and conviction and sentences of Count

One RICO and Count Two RICO conspiracy charges depicted in United States v. Marino, CR-97-40009-NMG. District of Massachusetts Worcester and Boston.

There is a reasonable and actual probability of a different result much more favorable to Marino, as judge Gorton would not have ethically, constitutionally enhanced Marino's sentence by the preponderance of the evidence an extra 8 offense levels under criminal history 5 to 420 months sentence an extra 20-25 years. Generating a genuine **"Public Interest"** that Marino received due process.

Also see Pugliano v. United States, Civil Action # _____ (District of Connecticut Hartford), defendants there used the very same arguments stating to Judge Nevas that they were not afforded a fair trial because the defendants/Agencies/DOJ and its components precluded the facts that Mercurio with the assistance of Bulger and Flemmi while working as FBI informants instigated and fomented violence the June 16, 1989 Salemme attempted murder and the June 1989 Grasso murder all of the defendants there were sentence to life in prison for the June 1989 Grasso murder. The District Court reversed there sentence because of egregious gross governmental misconduct, intentional Brady violations, government impediments, etc., described in **United States v. Salemme, 91 F.Supp.2d pages 267-269**

(D.Mass.1999) (UNDER SEAL), all defendants are all out of prison in that related case. The defendants there also argued that the Department of Justice and its components instigated and fomented violence and egregiously coverer it up by sealing the above documents described in Salemme.

[23] Additionally, if Marino prevails on his double jeopardy issue Marino would prove that he is unlawfully **held 13 years over** unconstitutionally, requiring Marino's immediate unconditional release.

With respect to this request made by a person (Marino) primarily engaged in disseminating information, urgently to inform the public concerning actual or alleged federal government egregious historic & current misconduct, human experiments, studies, research & development on unwitting United States Citizens Marino & their unlawful activities, as described supra.

Morgan v. DOJ, 923 F.2d 195 (D.C.Cir.1991) notes that were under **Sealed** in a criminal case may still be subject to FOIA. Discovery rules under Fed.R.Crim.P. 16 government's automatic obligation to hand over the above is historically & currently violated government's discovery obligation prejudicially against Marino. Defendants/DOJ's and its components misconduct, Intentional Brady violations has generated a substantial **"Public Interest."**

Consensual Interceptions under Local Rule 116.1(c)(1)(d) government failed to hand over the Laface & Mele tapes of July 1989 which implicates government witnesses: Laface & Mele in the Salemme 1989 attempted murder See FOIA Exhibit enclosed herein. And the October 1996 through December 15, 1996 tapes made by government witness Mele that also shows exculpatory evidence. Concerning Salemme attempted murder & government's witness Mele's instigation of violence while a DEA informant for DEA agents in U.S. v. Marino # CR-97-10026-JLT. (District of Massachusetts Boston.
See Mele & Laface concealed Tapes FBI File #281B-BS-65373

See heavily redacted **EXHIBIT**: Concealed TAPE showing government's/Defendants witness Mele's culpability in the June 16, 1989 Salemme attempted murder which if handed over to Marino may shows Marino's actual innocence of the Salemme attempt. Mele is caught on tape with Laface conspiring to murder Salemme in 1989 with machine guns equipped with silencers according to partially handed over heavily redacted documents. Clearly exculpating Marino from the Salemme attempted murder. *Marino request above concealed tapes proving Marino's Actual Innocence of Salemme attempted murder.*

Defendants/Agencies/DOJ and its components: **EXHIBIT**: Concealed 4 tapes **Proves Marino's Actual, Factual and Legal innocence** of the Salemme attempted murder and shows that the defendants only witness may have been the shooter in the June 16, 1989 Salemme attempted murder thus generating a **"Public Interest"** that the defendants/agencies/DOJ and its components not conceal evidence that may prove Marino's innocence, show governmental/defendants wrongdoing & prevent a core miscarriage of justice

See Tape FBI File #281B-BS-65373 Marino requests Tapes
 See **EXHIBIT**: Defendants/Agencies/DOJ and its components: Transcription Request/Approval Sheet Body Recorder generated 4 tapes by deceased informants Mark Eldridge, and Stephen Tramarchi recording current publicly known informant John "Smiley" Mele and Augustus "Gus" Laface conspiring to murder Salemme in 1989 with Ak-47 machine guns equipped with silencers according to a redacted version of the events. **Proves Marino's actual, factual and legal innocence of the June 16, 1989 Salemme attempted murder as NOW informants Mele and Laface while on tape admitted they were trying to kill Salemme in 1989 for ripping off their drug shipments and for trying to extort them and Salemme threatened to kill both Mele and Laface. Mele**

Tapes proves Marino's Actual Innocence of June 16, 1989 Salemme attempted murder.

denied this while under oath on the witness stand testifying against Marino in 1998 and 1999 trials.

Additionally Mele consensually placed on video and audio tape and signed a sworn affidavit that Salemme Sr. and Salemme Jr. were extorting him and trying to kill him to Officer of the Court Attorney James Costello, a now Winthrop, Massachusetts lawyer, which was apparently placed under lock & key. This discovery was also precluded from Marino at the 1998 trial and 1999 trial. This independently corroborated document supports Marino's actual, factual and legal innocence of the June 16, 1989 Salemme attempted murder giving government's star witness Mele MOTIVE to try and kill Salemme on June 16, 1989. This video, audio and documents were precluded from Marino for over 22 years. Also requires a "Public Interest" that Marino received due process and all Brady material that may prove his actual innocence.

*Marino request that the **defendants/Agencies/DOJ and its components** hand over this discovery or in the alternative hand it over to the court for an "Ex parte in camera review" for the court to determining whether it is exculpatory, does it show egregious governmental/defendants misconduct, Brady violations, government knowingly suborning perjurious testimony from its witnesses John "Smiley" Mele and agent Michael Buckley (convicted of murder & racketeering FBI agent Connolly's partner) and whether the unlawful 8 offence level enhancement should be precluded from Marino's sentence requiring Marino immediate unconditional release. **Marino is held over at least 10 years on that issue alone.***

The 4 tapes were precluded from Marino's two trials in 1998 & 1999 which appears to contain exculpatory material Brady evidence that may prove Marino actual, factual & legal innocence concerning the June 16, 1989 Salemme attempted murder which Marino was enhanced from Offence level 28 Criminal history 5 **130-162 months** as the Court sentenced Marino with the urging of the defendants an extra 8 Offense Level Enhancement under Criminal History 5 **292-365 months** by the preponderance of the evidence low standard of proof. Court went over that Guideline Sentence and sentenced Marino to **420 months even though the jury found Marino "NOT PROVEN" Beyond a reasonable doubt of the Salemme attempted murder.**

Electronic Surveillance 116.1(C)(1)(c) Reports 16 (a)(1)(D). Search Materials Local Rule 116.1(C)(1)(b).

Un-indicted coconspirators Local Rule 116.1(c)(1)(e);

Exculpatory Evidence Local Rule 116.2(B)(1); Rule 16/Local Rule 116.2 (B)(1); 116.1 Government's continuous duty to disclose evidence that's exculpatory/ Marino's reciprocal discovery Rule 16(b), 116.1(D), Rule 12.1 Fed.R.Crim.P., to Marino & to Marino's codefendant Enrico Ponzo & his lawyer David Duncan.

Defendants/Agencies/DOJ and its components: GOVERNMENT'S SEALED DOCUMENTS SHOWS EXCULPATORY MATERIAL BRADY EVIDENCE WHICH INDEPENDENTLY CORROBORATES MARINO'S ACTUAL, FACTUAL & LEGAL INNOCENCE & EGREGIOUS GOVERNMENTAL MISCONDUCT AND A GENUINE PUBLIC INTEREST

Plaintiff Marino Requests sealed documents Under United States v. Salemme, 91 F.Supp.2d 267-269 (D.Mass.1999) TO BE UNSEALED AND HANDED OVER TO MARINO

[24] The constitutional & common law qualified right of access apply only to judicial documents. *In Re Providence Journal Co., Inc.*, 293 F.3d 1, 9 (1st Cir.2002) (Common Law Right of Access attaches to materials "which properly come before the Court in the course of an adjudicatory proceeding & which are relevant to that adjudication (**Salemme attempted murder depicted as predicate racketeering act A-2 in Count One (RICO) & Count Two (RICO Conspiracy)** charges against defendants Marino & Ponzo) & "extends to materials on which a Court relies in determining the litigants' substantive rights") (internal quotations & citations omitted); 293 F.3d at 10. (Constitutional right of access "extends to documents & kindred materials submitted in connection with the prosecution & defense of criminal proceedings.").

See also *In Re Boston Herald, Inc. v. (FBI agent) Connolly*, 321 F.3d 174, 180 (1st Cir.2003) ("Both the Constitutional & common law rights of access have applied only to judicial documents"). See *In Re Boston Herald, Inc.*, 321 F.3d at 189 (noting that in common law right to access area, the phrase "materials on which a Court relies in determining the litigants' substantive rights" has been used to distinguish between documents presented to a judge in connection with a pretrial matter & on those which a judge actually decides the central issue in a case") Generating a core **"Public Interest."**

Nonetheless, there are arguments in favor of the defendant's (Marino's) ability to review them **(Salemme, 91 F.Supp.2d pages 267-269 (D.Mass.1999) Under Sealed Documents concerning the June 16, 1989 Salemme attempted murder charges against Marino & Ponzo** as predicate racketeering act A-2 in Count One (RICO) & Count Two (RICO Conspiracy) via *United States v. Marino*, CR-97-40009-NMG., District of Massachusetts Worcester and Boston.

See for example application of *National Broadcasting Co.*, 828 F.2d 340. 345 (6th Cir.1987), thus the circumstances in this case are relevant to defendant/Requester Marino & defendant Ponzo. See concealed & under seal documents in *United States v. Salemme*, 91 F.Supp.2d pages

267-269 (**Under Seal**) (D.Mass.1999) concerning the June 16, 1989 Salemme attempted murder instigated by FBI agent Connolly & his prized **"PUBLICALLY KNOWN"** serial killer informants: Angelo "Sonny" Mercurio, Stephen "The Rifleman" Flemmi & James "Whitey" Bulger. Also See United States v. (FBI agent) Connolly, 341 F.3d 16 (1st Cir.2003) showing FBI agent Connolly part of the Salemme, Bulger & Flemmi criminal enterprise. Also See State of Florida v. (FBI agent) Connolly, #_____, September 22, 2008's testimony of the government's deemed star & highly credible witness Flemmi testimony that he paid cash payoffs to FBI agents Connolly & **Michael Buckley** before **agent Buckley** testified against Marino in front of the investigating federal grand jury in April 4, 1997 & before **agent Buckley** "Fraudulently" testified against Marino in the first trial in 1998 & second trial in 1999 and debriefed all of the government's witnesses.

See **Exhibit:** Boston Globe Tuesday, September 23, 2008/Boston.Com/Local pages B1-B4 City & Region in support attached herein. By: Shelley Murphy Globe Staff.
(Flemmi and Bulger's cash Payoffs to FBI agents Connolly & Buckley to protect their criminal enterprise from the 1980s to present date).

According to Brady v. Maryland, 373 U.S. 83, 87 (1963); Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793, 17 L.Ed.2d 737 91967); Giglio v. U.S., 405 U.S. 150, 93 S.Ct. 763, 31 L.Ed.2d 104 (1972), the Defendants/Agencies/DOJ and its components government failed to hand over all exculpatory material Brady evidence to Marino **within 14 days of Marino's arraignment** and also for over 22 years since 1989 when the Brady exculpatory material evidence was available to the defendants/Agencies/DOJ and its components. Under the Local Rules of the United States District Court District of Massachusetts and nation wide federal courts, in effect the prosecution/**defendants/agencies/DOJ and its components**, was required to turn over automatically all written, testimonies, statements, documents and material and any fraud upon the courts constituting "exculpatory evidence within the meaning of Giles v. Maryland, 386 U.S. 66 (1967), Brady v. Maryland, 373 U.S. 83, 87 (1963); Giglio v. U.S., 405 U.S. 150 (1972); **D.Mass.R. 116.1(A)(5) 1990.**" Over to Marino and failed to do so both historic since 1989 and current 2012 for over 22 years which shows Marino's factual, actual and legal innocence, egregious governmental misconduct, Brady violations, governmental impediments etc. All generating a core "Public Interest" that Marino receive due process.

The Rule required initial disclosure within 14 days of Marino's arraignment; from that point forward the government/defendants/agencies/DOJ and its components had a **"CONTINUING DUTY"** to supplement its original disclosure under Fed.R.Crim.P. Rule 16 letter or supplemental letter if & when new material surfaced, such as issues concealed by the defendants/agencies/DOJ and its components in United States v. Salemme, 91 F.Supp.2d pages 267-269 (**Under Seal**) (D.Mass.1999). See **D.Mass.R. 116.1(c).** The Defendants/Agencies/DOJ and its components failed to do so in Marino for over 22 years.

The Local Rules required automatic disclosure of all evidence within the government's ken that tended to negate Marino's guilt or punishment. **D.Mass.R. 42(a)(5) 1986.** The defendants/agencies/DOJ and its components failed to do so in Marino.

According to: ***D.Mass.R. 42(a)(5) 1986***, the Local Rules were amended to impose an additional requirement that the government/defendants/agencies/DOJ and its components on its own initiative provide Marino, with any & all exculpatory evidence that might be used to impeach witnesses, governmental employee etc. ***D.Mass.R. 116.1(a) 1990***. The Defendants/Agencies/DOJ and its components failed to do so in Marino.

There is a presumption that Prosecutors/Defendants/Agencies/DOJ and its components can be relied on to perform their official duties properly. *Ramirez v. Sanchez Ramos*, 438 F.3d 92, 99 (1st Cir.2006). It appear that the defendants/Agencies/DOJ and its components failed to perform their duties properly concerning the Marino case.

Once again in *Brady v. Maryland*, 373 U.S. at 87, 83 S.Ct. 1194, the Supreme Court held, in 1963, that “[t]he suppression by the prosecution/Defendants/Agencies/DOJ and its components of favorable evidence to the accused Marino, violates due process where the evidence is material to guilt or punishment...” In 1985, in *Bagley*, 473 U.S. at 682, 105 S.Ct. 3375, the Court held that “evidence is material only if there is a reasonable probability that had the evidence supra been disclosed to the defense Marino, the result of the proceeding would have been different.” See also *Kyles v. Whitely*, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); *Pennsylvania v. Ritchie*, 480 U.S. 39, 57, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987).

Since at least 1984, the Supreme Court has treated the “materiality” requirement for *Brady v. Maryland*, claims and “prejudice” requirement for ineffective assistance of counsel claims as synonymous. See: *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

The Reasonable Probability Standard applies to Marino

In *Kyles*, 514 U.S. at 434, 115 S.Ct. 1555, the Supreme Court explains the meaning of “***reasonable probability***.” It wrote: *Bagley*’s touchstone of materiality is a “reasonable probability” of a different result, and the adjective is important. The question is not whether the accused Marino, would more would more likely than not received a different [result] with the evidence, but whether in its absence he Marino received [a result] worthy of confidence. A “reasonable probability” of a different result is accordingly shown supra in Marino, which the: government/defendants/agencies/DOJ and its components actions “undermines confidence in the outcome of Marino’s case...” *Bagley*, 473 U.S. at 678, 105 S.Ct. 3375. *Id* at 434, 115 S.Ct. 1555. See also *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (stating that “the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense

Marino by the prosecution,,,"); Ruiz v. U.S., 339 F.3d 39, 43 (1st Cir.2003) ("**Brady [v. Maryland]** claims are subject to the same prejudice requirement as ineffective assistance claims," citing Strickland and Bagley); Miller, 848 F.2d at 1321-22. Marino has clearly established "**materiality**" and "**prejudice**," as Marino has proved a "reasonable probability that the result of the Marino proceeding would have been different, much more favorable to Marino, had the government/defendants/agencies/DOJ and its components handed over the concealed and under seal Brady exculpatory material evidence and other egregious governmental misconduct material in the Marino cases as described in more detail supra." Strickland, 466 U.S. at 694; See Bagley, 473 U.S. at 682; Ruiz v. U.S., 339 F.3d at 41.

Conclusion

Relief Requested: WHEREFORE, Plaintiff Marino prays that this Honorable Court:

1. Enter an Order Declaring that defendants/agencies, supra refusal to disclose the under sealed records in United States v. Salemme, 91 F.Supp.2d pages 267-269 (**Under Seal**) (D.Mass.1999) which may contain documents that shows Marino's **actual, tactual and legal** innocence of the June 16, 1989 Salemme attempted murder depicted as predicate racketeering act A-2 in Count One RICO & Count Two RICO Conspiracy charges against Marino. Also showing egregious gross governmental misconduct, Brady violations, due process violations & other described records supra & transcripts of meetings requested by Plaintiff Marino is unlawful, and generated a genuine "**Public Interest**" that Marino receives due process, that the government **not** intentionally conceals evidence that proves Marino's innocence, that Marino received a fail trial.

(A) **Defendants/Agency's** is subject to the FOIA/PA and Sunshine Act but is **NOT** complying with any of its requirements;

(B) **Defendants/agency's** is subject to the FOIA but is failing to promulgate regulations and make agency records available to the public as required by 5 U.S.C. Sections 552(a)(1), (a)(2), and (a)(4);

(C) **Defendants/agency's** is unlawfully withholding documents and unreasonably delaying agency action and is acting arbitrarily, capriciously, and contrary to law, in violation of FOIA/PA/Sunshine Act & APA;

2. Enter an Order preliminarily enjoining the defendants/agency's from conducting any further meetings unless and until it undertakes to comply with the requirements of Sections (b) through (g) of the Sunshine Act, 5 U.S.C. Sections 552b(b)-(g);

3. Enter a permanent injunction directing the agencies/defendants supra to comply promptly with the requirements of the Sunshine Act, FOIA/PA acts;

4. Award Plaintiff Marino his costs, reasonable attorney fees, filing fees and other disbursements in this action; and

5. Allow Plaintiff Marino to file for additional costs of **\$1 Million Dollars per year** For every year that Marino is held over his term of imprisonment because of the above **“intentional”** governmental misconduct that is supported with the public records and records placed under seal by the above defendants/agencies designed to cover-up the facts that convicted FBI agent Connolly & his **publicly known Top Echelon FBI informants** and **Publicly Known serial killers:** Angelo “Sonny” Mercurio, called Salemme to a locations on June 16, 1989, with the assistance of two other **publicly known informants** James “Whitely” Bulger & Stephen “The Rifleman” Flemmi to be assassinated. Also **“Publicly Known”** FBI agent Connolly whom was convicted o murder and being part of the Salemme, Bulger, Flemmi criminal Enterprise and accepted cash payoffs to protect it from it enemies as the government deemed Marino as among its enemies according to U.S. v. Marino, 277 F.3d 11 (1st Cir.2002); U.S. v. Marino, 200 F.3d 6 (1st Cir.1999). Connolly was also depicted as instigating the Salemme attempted murder according to Salemme, 91 F.Supp.2d pages 151, 153, 171, 174, 219, 261-311 (D.Mass.1999), See also pages 267-269 (Under Seal).

And then the government intentionally placed the records under seal and defrauded the U.S. v. Marino, 97-CR-40009-NMG., D.Mass.Worcester & Boston 1997 grand jury, 1998 & 1999 jury’s, Judge Gorton & Marino, violating Marino’s due process etc. Adversely affecting Marino as Marino received a **8 Offense Level enhancement**, equivalent to **20-25 extra years to serve in prison** for the June 16, 1989 Salemme attempted murder even-though the jury found predicate racketeering act A-2 **“NOT PROVEN” beyond a reasonable doubt** in both Count One RICO & Count Two RICO Conspiracy charges via United States v. Marino, CR-97-40009-NMG. District of Massachusetts Worcester, December 22, 1999 Jury Verdict.

6. Order defendants/agency’s supra to make the requested records & other records that shows exculpatory material Brady evidence available to Plaintiff Marino;

7. Order the defendants/agency’s supra to comply under the Sunshine Act 5 U.S.C. Section 552b, FOIA 5 U.S.C. Section 552, & Privacy Act 5 U.S.C. Section 552a.

8. Grant Plaintiff Marino such other & further relief as the Court may deem just & proper.

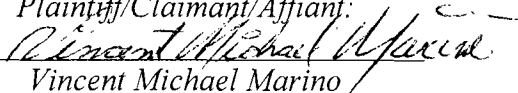
9. Order an independent counsel to convene a federal grand jury & utilize subpoena powers to further ascertain Defendants/Agencies **“intentional”** misconduct, fraud upon the federal grand jury, fraud upon the 1998 & 1999 Jury’s & **“intentionally”** placing under seal documents that shows the defendants/agencies core misconduct, **“Intentional Brady Violations”** knowingly suborning perjury during grand jury & jury trial testimony against Marino & Ponzo concerning the June 16, 1989 Salemme attempted murder, from FBI agent Michael Buckley after agent Buckley received cash payoffs from FBI informants Flemmi & Bulger to protect their

criminal enterprise. And the government intentionally concealed the above egregious misconduct from Marino for over 22 years.

This Complaint specifically requests information beginning on this date: **1989 through 2012** up until the present date. *Signed under 28 U.S.C. Section 1746*, under the penalties of perjury the above to be true, correct & complete. Pro Per In Propria Persona Proceeding Sui Juris, on this:

20th day of **May**, 2012.

Respectfully Submitted By
Plaintiff/Claimant/Affiant:


Vincent Michael Marino

14431-038

FCI McDowell

P.O. Box 1009

Welch, West Virginia

24801

Certificate of Service

I FOIA/PA Plaintiff Marino, hereby certify that this Complaint for Declaratory, Injunctive & Monetary Relief was sent via United States Mail/Postage Prepaid on this 20th day of **May**, 2012 to the following:

Latanau Scott
Clerk of Courts

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333 Constitution Ave. N.W.
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Washington, D.C. 20001

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Civil Division #E-4412
555 Fourth Street, N.W.
Washington, D.C. 20530

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United States Department of Justice
Eric Holder, Attorney General
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Criminal Division/ Department of Justice
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Office of Enforcement Operations
Witness & Special Operations Unit
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Vincent Michael Marino
14431-038
FCI McDowell
P.O. Box 1009
Welch, West Virginia
24801

City & Region

BOSTON GLOBE TUESDAY, SEPTEMBER 23, 2008 | BOSTON.COM/LOCAL

B
Deaths B5
Weather D8
Lottery B2
Names B8

Bulger cohort unloads on stand

Says Connolly accepted \$235k in gang payoffs

By Shelley Murphy
GLOBE STAFF

MIAMI — The gangster and the FBI agent met clandestinely for years at the homes of FBI agents and shared secrets late at night while strolling along beaches in Quincy, Dorchester, and South Boston.

But yesterday, longtime FBI informant Stephen "The Rifleman" Flemmi faced retired FBI agent John J. Connolly Jr. in a Florida courtroom as the ex-gangster testified that Connolly pocketed \$235,000 in payoffs, compromised investigations, and leaked information that led to several murders.

After taking a \$25,000 kickback that he knew came from drug proceeds in 1983, Flemmi told jurors yesterday, Connolly had joked, "Hey, I'm one of the gang."

The once-decorated agent, who is already serving



POOL PHOTO

Stephen "The Rifleman" Flemmi testified in the murder trial of John J. Connolly Jr. yesterday.

10 years in prison for racketeering and is now on trial on murder charges, raised his eyebrows in apparent disbelief as he stared at the slightly built, 74-year-old man he had used as an informant against

the New England Mafia.

Jurors, who heard from another hitman last week, John Martorano, barely flinched as Flemmi told them that he and fellow informant James "Whitey" Bulger generally paid Connolly twice a year: \$5,000 when he was going on vacation and \$10,000 for Christmas — with an additional kickback now and then when they made a big score.

The agent had a close relationship with Bulger and the two vacationed together in Acapulco and Provincetown, Flemmi said.

He said Bulger reduced Connolly's payoffs at one point out of concern the agent was too flamboyant, buying real estate on Cape Cod and dressing in fancy suits.

"One time we gave him money, he went and bought a boat," Flemmi said. "Jim Bulger was upset about that. He had to sell the boat. I mean, FBI agents weren't making much money back in those days. He was the best-dressed agent in the office and people would start looking at him. That was a con-

CONNOLLY, Page B4

Exhibit

Sept. 22, 2008

Sept. 23, 2008

Transcripts

State of Florida
V.
John J. Connolly Jr.
FBI agent

cern."

Flemmi said he and Bulger paid Connolly and four other agents from an expense fund, which came from criminal profits. One of those agents, John Morris, received immunity from prosecution and will testify later. The other three, John Newton, Nicholas Gianturco, and Michael Buckley, have never been charged and all have denied receiving money from the gangsters.

Connolly, 68, who retired from the FBI in 1990 after 22 years, is accused of first-degree murder and conspiracy to commit murder in the 1982 slaying of Boston business consultant John B. Callahan. He is accused of

warning Flemmi and Bulger that the FBI planned to question Callahan and that he would probably implicate the gangsters in an earlier slaying. Bulger, who fled shortly before his 1995 racketeering indictment, remains on the FBI's 10 Most Wanted list.

Flemmi, dressed in prison-issued khaki pants and a short-sleeved shirt, occasionally chewed his bottom lip while testifying and sipped on orange juice. Connolly frequently frowned at Flemmi, who is serving a life sentence for 10 murders under a deal that spared him the death penalty.

He has pleaded guilty to killing eight men and two women

ing eight men and two women

ton's 1960s gang wars he shot Charlestown gang leader Edward "Punchy" McLaughlin. He also said that in addition to those killings, he was involved in 10 other slayings — either participating or cleaning up afterward.

For the first time, Flemmi publicly described how he and Bulger formed the partnership that helped them become two of the most powerful gangsters in Boston. After teaming up with the Somerville-based Winter Hill Gang in the mid-'70s, Flemmi said, he and Bulger "kind of hit it off together because we both identified with each other's activities."

Both were physical fitness buffs who did not drink or smoke, he said.

"The rest of the guys were kind of party-type guys," Flemmi said. "We liked to party also, we

He said Bulger initially told the gang in 1975 that Connolly, who grew up in the same South Boston housing project as the Bulger family, was leaking information to him, Flemmi said.

Later that year, Flemmi said, Bulger introduced him to Connolly and asked him to provide information about local Mafia leaders.

Flemmi said he had easy access to local Mafia leaders and had declined several offers to join the mob. "I didn't trust them," he testified.

He added that Bulger, who could not join the Mafia because he was not Italian, did not trust the leaders either, and apparently the feeling was mutual.

"They didn't particularly like him because he was kind of a violent guy," Flemmi said. "He was his own person."

bookmaker Richard Castucci was an informant who had told the FBI where two fugitive Winter Hill Gang members were hiding in New York. Earlier, hitman-turned-government witness Martinorano testified that he killed Castucci as a result of the tip.

In 1978, according to Flemmi, Connolly warned him and Bulger that most of the Winter Hill Gang was going to be indicted on federal race-fixing charges because of a scheme, Anthony Ciulla, was operating.

However, Flemmi said Connolly helped persuade a prosecutor to remove him and Bulger from the indictment, but insisted, "We had to give our word we wouldn't kill Tony Ciulla."

Flemmi said Connolly also told him and Bulger in 1982 that Edward "Brian" Halloran was an

prompting Bulger to kill Halloran.

After testifying for just under four hours, with breaks for recess and lunch, Flemmi said he was having difficulty focusing on the questions. At the prosecution's request, Miami-Dade Circuit Judge Stanford Blake ushered the jury from the room and asked Flemmi, "Are you getting tired, or you didn't understand the question?"

"Both," said Flemmi, adding that he had not had much sleep since being moved from prison to an undisclosed jail on Wednesday. "How's the food there?" the judge asked.

"If I fed it to my dog, he'd bite me," Flemmi said.

The judge promptly halted the trial for the day. Flemmi will resume on the stand today.

Exhibit

'The Rifleman' Flemmi details payoffs to FBI agents



POOL PHOTO

Former FBI agent John J. Connolly Jr. (left), with his lawyer Bruce Fleicher, during testimony from Stephen Flemmi, a jailed Boston mob leader and FBI informant. Flemmi is expected to resume his testimony today.

Exhibit

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 09-1854

Exhibit

UNITED STATES OF AMERICA,
Appellee

v.

VINCENT MICHAEL MARINO,
Defendant-Appellant

GOVERNMENT'S MOTION FOR SUMMARY DISPOSITION

Pursuant to Local Rule 27(c), the United States of America respectfully requests this Court to summarily dismiss defendant Vincent Michael Marino's appeal of the district court's denial of motions to vacate his racketeering convictions and sentence under Fed. R. Civ. P. 60(a) and (b) and for a writ of *audita querela* pursuant to the All Writs Act, 28 U.S.C. §1651. Marino contends that the district court (Gorton, D.J.) erred in dismissing his motions, in failing to hold a hearing on the motions, and in declining to recuse itself from deciding the motions. To the contrary, the district court properly construed Marino's motions as a second and successive motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. §2255, and properly denied those motions because Marino had not sought and obtained this Court's permission to file a second and successive challenge to his sentence under §2255. See 28 U.S.C. §§2255(h), 2244. Accordingly, this appeal does not present

Oct. 15, 2009
Govt's RESPONSE Appendix #G1.
Via U.S. v. Marino
09-1854 (1st cir. 2009).

a substantial question for review, and the Court should summarily dismiss it.

RELEVANT FACTS

Exhibit!

1. Marino's indictment and conviction.

Marino and 14 co-defendants, all members and associates of the Patriarca Family of La Cosa Nostra, were indicted on April 4, 1997 in a 40-count indictment in the District of Massachusetts that charged Marino with RICO, in violation of 18 U.S.C. §§1962(c) and 2 (Count 1); RICO conspiracy, in violation of 18 U.S.C. §1962(d) (Count 2); conspiracy to murder 14 individuals in aid of racketeering ("VICAR conspiracy"), in violation of 18 U.S.C. §1959 (Count 3); using and carrying firearms in relation to the Count 3 VICAR conspiracy, in violation of 18 U.S.C. §§924(c) and 2 (Count 4); narcotics trafficking conspiracy, in violation of 21 U.S.C. §846 (Count 30); and using and carrying firearms in relation to the Count 30 drug trafficking conspiracy, in violation of 18 U.S.C. §§924(c) and 2 (Count 31).¹ [D.1].²

→ [The first day of trial, September 28, 1998, the government moved to dismiss Count

¹The facts underlying Marino's conviction are set forth in detail in this Court's opinion in *United States v. Marino*, 277 F.3d 11 (1st Cir. 2000).

²The citation "D." refers to the docket entries in the underlying criminal case, *United States v. Carrozza*, Criminal No. 97-40009-NMG. The citation "Civ.D." refers to the docket entries in Marino's motion to set aside or vacate his sentence pursuant to 28 U.S.C. §2255, *Marino v. United States*, Civil Action No. 03-40143-NMG. The motions at issue here were docketed in the underlying criminal case.

OCT. 15, 2009
Govt's RESPONSE

2

Appendix #G2.

Via: U.S. V. Marino,
09-1854 (1st Cir. 2009)

Exhibit

→ 30, the drug conspiracy charge, against Marino, which the district court granted on October 22, 1998. [See D.581, D.10/22/98].

On January 12, 1999, after a three and one-half month trial, the jury acquitted Marino on Counts 4 and 31, but was unable to reach a verdict on the remaining counts against him. [D.707]. The district court declared a mistrial as to those counts.³ [D.708].

Retrial began on October 25, 1999. Following a two and one-half month retrial, Marino was found guilty on December 22, 1999 of RICO, RICO conspiracy, and VICAR conspiracy (Counts 1, 2, and 3, respectively). [D.1078]. The jury indicated on the special verdict form that the government had proved that Marino had committed two racketeering acts: Racketeering Act A-1, the conspiracy to murder in violation of state law (also charged in Count 3 as a VICAR violation); and

→ Racketeering Act B, the drug trafficking conspiracy, in violation of 21 U.S.C. §846 (also charged in the dismissed Count 30). [D.1078].

Marino was sentenced on April 13, 2000, to 420 months' imprisonment and three years' supervised release. [D.1149, 1151]. This Court affirmed Marino's conviction and sentence on January 14, 2000. *Marino*, 277 F.3d at 11.

³The district court later denied Marino's motion to dismiss the mistried counts on collateral estoppel grounds [D.751], and this Court affirmed. *United States v. Marino*, 200 F.3d 6 (1st Cir. 1999).

Appendix #G3.

Oct. 15, 2009
Govt's Response

Via: U.S. V. Marino, #09-1854(1st cir-2009)

CONCLUSION

For the foregoing reasons, this appeal does not present a substantial question and the judgment of the district court should be summarily affirmed.¹⁵

Exhibit

Respectfully submitted,

MICHAEL K. LOUCKS
Acting United States Attorney

By: Cynthia A. Young
CYNTHIA A. YOUNG
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Cynthia A. Young, Assistant U.S. Attorney, certify that today, October 15, 2009, I caused one copy of the foregoing motion to be served by first-class mail on defendant-appellant Vincent Michael Marino, #14431-038, FCI Ray Brook, P.O. Box 9003, Ray Brook, NY 12977.

Cynthia A. Young
Cynthia A. Young

Appendix #G14.

¹⁵Should the Court decline to grant summary disposition, the government requests the opportunity to file an appellate brief in this case. Accordingly, the government is also filing with this motion a request to stay the briefing schedule pending the Court's resolution of this motion.

OCT. 15, 2009

14

Govt's Response

Via: U.S. V. Marino, #09-1854 (1st cir. 2009).

Exhibit

SEAL

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

CRIMINAL NUMBER 97- 40009-NM

ROBERT F. CARROZZA,

A/K/A BOBBY RUSSO

MICHAEL P. ROMANO, SR.,

ANTHONY CIAMPI,

SEAN THOMAS COTE,

ENRICO M. PONZO,

MARK SPISAK,

JOHN J. PATTI, III,

EUGENE A. RIDA, JR.,

A/K/A GINO,

JOHN M. ARCIERO,

VINCENT MICHAEL MARINO,

A/K/A GIGI PORTALLA,

PAZZARO RALPH SCARPA,

PAUL A. DECOLOGERO,

CHRISTOPHER PUOPOLO,

ANTHONY DIAZ and

LEO M. BOFFOLI,

A/K/A CHIPPER

Violations:

18 U.S.C. § 1962

18 U.S.C. § 1959

18 U.S.C. § 1952

18 U.S.C. § 1955

18 U.S.C. § 1951

21 U.S.C. § 846

18 U.S.C. § 924(c)

18 U.S.C. § 1512

18 U.S.C. § 3

18 U.S.C. § 2

18 U.S.C. § 1623

INDICTMENT

The Grand Jury charges that:

COUNT ONE

(18 U.S.C. §§ 1962(c) and 2)

(RICO -- Substantive)

The Enterprise

1. From a date in or before June, 1989, through in or after December, 1994, in the District of Massachusetts and elsewhere, the Patriarca Family of La Cosa Nostra, including its leaders, members and associates, did constitute an enterprise (the "Enterprise") within the meaning of Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact, which engaged in various criminal activities, including multiple acts involving murder in violation of the laws of the

Appendix #4.

DJ#123-3632

Exhibit

and unknown to the Grand Jury to murder one Enrico M. Ponzo, in violation of Massachusetts General Laws, Chapter 265, Section 1, and Chapter 274, Section 7.

B. Act of Racketeering Involving the Felonious Receiving, Concealment, Buying, Selling and Otherwise Dealing in Controlled Substances in Violation of the Laws of the United States

Racketeering Act B

From in or before summer, 1993, through in or after December, 1994, in the District of Massachusetts and elsewhere, the defendants,

MICHAEL P. ROMANO, SR.,
ANTHONY CIAMPI,
ENRICO M. PONZO,
JOHN J. PATTI, III,
JOHN M. ARCIERO,
VINCENT MICHAEL MARINO, A/K/A GIGI PORTALLA,
NAZZARO RALPH SCARPA and
PAUL A. DECOLOGERO,

did knowingly, willfully and intentionally combine, conspire, confederate and agree with each other and with persons known and unknown to the Grand Jury, knowingly and intentionally to possess with intent to distribute and to distribute a quantity of a mixture or substance containing cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

In violation of Title 21, United States Code, Section 846.

C. Acts of Racketeering Indictable Under Title 18, United States Code, Section 1952 (relating to interstate travel in aid of racketeering)

Racketeering Act C-1

On or about November 2, 1990,

Appendix #5.

COUNT THIRTY
(21 U.S.C. § 846)

From in or before summer, 1993, through in or after December, 1994, in the District of Massachusetts and elsewhere, the defendants,

MICHAEL P. ROMANO, SR.,
ANTHONY CIAMPI,
ENRICO M. PONZO,
JOHN J. PATTI, III,
JOHN M. ARCIERO,
VINCENT MICHAEL MARINO, A/K/A GIGI PORTALLA,
NAZZARO RALPH SCARPA and
PAUL A. DECOLOGERO,

did knowingly, willfully and intentionally combine, conspire, confederate and agree with each other and with persons known and unknown to the Grand Jury, knowingly and intentionally to possess with intent to distribute and to distribute a quantity of a mixture or substance containing cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841 (a)(1).

All in violation of Title 21, United States Code, Section 846.

Appendix #8.

Exhibit

U.S. V. Marino, CR-97-40009-NMG (D. Mass)

09/25/1998	539	Statement of the Case by USA as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, Sean Thomas Cote, Enrico M. Ponzio, Mark F. Spisak, John J. Patti III, Eugene A. Rida Jr., John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, Leo M. Boffoli. c/s. (cjm) (Entered: 09/29/1998)
09/25/1998	540	Response by USA to Uniform Order on Automatic Discovery as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, John J. Patti III, Eugene A. Rida Jr., Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, filed. c/s. (cjm) (Entered: 09/29/1998)
09/28/1998		Voir dire begun as to Robert F. Carrozza (1) count(s) 1, 2, 3, 4, 32, Michael P. Romano (2) count(s) 1, 2, 3, 4, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, Anthony Ciampi (3) count(s) 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, John J. Patti (7) count(s) 1, 2, 3, 4, 11, 14, 15, 30, 31, Eugene A. Rida (8) count(s) 1, 2, 3, 4, 19, 20, 21, Vincent Michael Marino (10) count(s) 1, 2, 3, 4, 30, 31, Nazzaro Ralph Scarpa (11) count(s) 1, 2, 3, 4, 11, 16, 17, 30, 31, Paul A. DeCologero (12) count(s) 1, 2, 3, 4, 16, 17, 28, 29, 30, 31, Christopher Puopolo (13) count(s) 3, 4, Anthony Allan Diaz (14) count(s) 22, 23, 24, 25. (cjm) (Entered: 09/29/1998)
09/28/1998		Jury trial as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, John J. Patti III, Eugene A. Rida Jr., Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz held DAY 1. (cjm) (Entered: 09/30/1998)
09/28/1998	543	Judge Nathaniel M. Gorton . CLERK'S NOTES as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, John J. Patti III, Eugene A. Rida Jr., Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, re: Case called for Jury Trial day 1; Counsel and defendants appear for jury selection; Voir dire begun, jury selection begins. Trial continued to 9/29/98 at 10:00am. Court Reporter: C. Dahlstrom (cjm) (Entered: 09/30/1998)
09/28/1998	581	MOTION by USA, as to Michael P. Romano Sr., Vincent Michael Marino to dismiss count 30., filed. (fmr) (Entered: 10/28/1998)
09/29/1998	542	Letter by Rebecca L. Goldberg (non-motion) filed, dated: 9/27/98, re: motion to quash. c/s. (cjm) (Entered: 09/29/1998)
09/29/1998		Jury trial as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, John J. Patti III, Eugene A. Rida Jr., Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz held day 2. (cjm) (Entered: 09/30/1998)
09/29/1998		Text not available. (Entered: 10/21/1998)
09/29/1998	544	Judge Nathaniel M. Gorton . CLERK'S NOTES as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, John J. Patti III, Eugene A. Rida Jr., Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, re: jury trial day 2; Jury selection continued, Jury empanelled, Court holds conference outside hearing of jurors and rules on outstanding motions, reset Jury trial for 9:00 10/1/98 for Robert F. Carrozza, for Michael P. Romano Sr.,

Exhibit

Appendix # DK # 581.

U.S. v. Marino, CR-97-40009-NMG (Domass)

10/22/1998	575	Judge Nathaniel M. Gorton . CLERK'S NOTES as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, Sean Thomas Cote, Enrico M. Ponzo, Mark F. Spisak, John J. Patti III, Eugene A. Rida Jr., John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, Leo M. Boffoli , re: jury trial day 13; Counsel and dft appear for trial. Gvts case continues eith the testimony of Jerry Matricia. Jury trial contiued to 10/23/98 ; Court Reporter: Dahlstrom (fmr) (Entered: 10/28/1998)
10/22/1998	576	MOTION by Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, Sean Thomas Cote, Enrico M. Ponzo, Mark F. Spisak, John J. Patti III, Eugene A. Rida Jr., John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, Leo M. Boffoli to enforce complaince with trial subpoenas , filed. (fmr) (Entered: 10/28/1998)
10/22/1998		Judge Nathaniel M. Gorton . ENDORSED ORDER as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, Sean Thomas Cote, Enrico M. Ponzo, Mark F. Spisak, John J. Patti III, Eugene A. Rida Jr., John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, Leo M. Boffoli : granting [576-1] motion to enforce complaince with trial subpoenas, as no motions to quash have been filed as to Robert F. Carrozza (1), Michael P. Romano (2), Anthony Ciampi (3), Sean Thomas Cote (4), Enrico M. Ponzo (5), Mark F. Spisak (6), John J. Patti (7), Eugene A. Rida (8), John M. Arciero (9), Vincent Michael Marino (10), Nazzaro Ralph Scarpa (11), Paul A. DeCologero (12), Christopher Puopolo (13), Anthony Allan Diaz (14), Leo M. Boffoli (15). (fmr) (Entered: 10/28/1998)
→ 10/22/1998		Judge Nathaniel M. Gorton . ENDORSED ORDER as to Michael P. Romano Sr., Vincent Michael Marino : <u>granting</u> [581-1] motion to dismiss count 30 as to Michael P. Romano (2), Vincent Michael Marino (10). (fmr) (Entered: 10/28/1998)
→ 10/22/1998		DISMISSAL of Count(s) on Government Motion as to Michael P. Romano Sr., Vincent Michael Marino . Counts Dismissed: Michael P. Romano (2) count(s) 30, Vincent Michael Marino (10) count(s) 30 (fmr) (Entered: 10/28/1998)
10/22/1998	798	RESPONSE by USA as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, John J. Patti III, Eugene A. Rida Jr., Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo in opposition to [797-1] motion for pretrial Petrozziello rulings, filed. c/s (fmr) (Entered: 04/23/1999)
10/23/1998		Jury trial as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, Sean Thomas Cote, Enrico M. Ponzo, Mark F. Spisak, John J. Patti III, Eugene A. Rida Jr., John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, Leo M. Boffoli held . (fmr) (Entered: 10/28/1998)
10/23/1998	579	Judge Nathaniel M. Gorton . CLERK'S NOTES as to Robert F. Carrozza, Michael P. Romano Sr., Anthony Ciampi, Sean Thomas Cote, Enrico M. Ponzo, Mark F. Spisak, John J. Patti III, Eugene A. Rida Jr., John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, Leo M. Boffoli , re: jury trial day 14; Case called. Gov't case continues. Jury

Exhibit

APPENDIX # DKT Entry # 576.

U.S. v. Marino, CR-97-40009-NMG. (D. Mass.)

Conspiracy charged in Count 3 of the indictment, during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit, conspiracy to murder, as consideration for the receipt of, and as consideration for a promise to pay a thing of pecuniary value, to wit, money, from an enterprise engaged in racketeering activity, and for the purpose of gaining entrance to and maintaining and increasing position in an enterprise engaged in racketeering activity, as charged in Count 3 of the indictment, did knowingly use and carry firearms, to wit, machine guns, firearms equipped with firearm silencers, firearms equipped with firearm mufflers, shotguns, handguns and a destructive device, as those items are defined in 18 U.S.C. Section 921, in violation of 18 U.S.C. 924(c) and 2.

(F) Count 30 charges that from summer 1993 to December 1994, Michael P. Romano, Sr., Anthony Ciampi, Enrico M. Ponzio, John J. Patti, III, John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa and Paul A. DeCologero conspired with each other and others, knowingly and intentionally to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 841(a)(1) and 846.

(G) Count 31 charges that in summer 1993 through December 1994, Michael P. Romano, Sr., Anthony Ciampi, Enrico M. Ponzio, John J. Patti, III, John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero and others, aiding and abetting one another, in furtherance of the conspiracy charged in Count 30 of the indictment, during and in relation to drug trafficking crimes, to wit, conspiracy to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 841(a)(1), all in violation of 21 U.S.C. 846, as charged in Count 30 of this indictment, did knowingly use and carry firearms, to wit, handguns, in violation of 18 U.S.C. 924(c) and 2.

(H) With respect to racketeering act b of Count 1, Count 2 and Count 30, the Indictment gives notice of the applicability of 21 U.S.C. §841(b)(1)(B), alleging that these counts involved 500 grams or more of cocaine.

(I) Marino, who was already in federal custody on unrelated charges (see Pending Charges section below), made his first appearance in U.S. District Court before the Honorable Charles B. Swartwood, U.S. Magistrate Judge, on April 17, 1997. Later that day, Marino was arraigned and pleaded not guilty to all counts. To date, Marino has remained in custody.

(J) On September 28, 1998, a trial commenced before the Honorable Nathaniel M. Gorton, U.S. District Judge, District of Massachusetts at Worcester in the above matter. On this date, the government dismissed Count 30. On January 12, 1999, Marino was acquitted of

Presentence Investigative Report
of Vincent Michael Marino
14431-038.

RICO
TRIAL
II.

Exhibit Verdict Sheet

Entered 4:40pm
12/22/99UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKETED

Appendix #17

United States of America

v.

Vincent Michael Marino,
a/k/a Gigi Portalla.Criminal Action No.
97-40009-NMGWE, THE JURY, FIND the defendant VINCENT MICHAEL MARINO,
a/k/a GIGI PORTALLA:As to Count One ✓ Guilty Not GuiltyIf you find VINCENT MICHAEL MARINO, a/k/a GIGI PORTALLA,
guilty as to Count One, please indicate below which racketeering
acts you find that VINCENT MICHAEL MARINO, a/k/a GIGI PORTALLA,
committed:

Act A-1	(Conspiracy to Murder)	<u>✓</u> Proved
Act A-2	(Salemme Attempt)	<u> </u> Proved
Act B	(Cocaine Conspiracy)	<u>✓</u> Proved

As to Count Two ✓ Guilty Not GuiltyIf you find VINCENT MICHAEL MARINO, a/k/a GIGI PORTALLA,
guilty as to Count Two, please indicate below which racketeering
acts you find that VINCENT MICHAEL MARINO, a/k/a GIGI PORTALLA,
personally agreed to commit:

Act A-1	(Conspiracy to Murder)	<u>✓</u> Proved
Act A-2	(Salemme Attempt)	<u> </u> Proved
Act B	(Cocaine Conspiracy)	<u>✓</u> Proved

As to Count Three (conspiracy to murder in aid of racketeering)

✓ Guilty Not Guilty

Appendix #17

James G. Gullett
FOREPERSON'S SIGNATURE12/22/99
DATE

Appendix #17

United States District Court
District of Massachusetts

Exhibit

VINCENT MARINO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No.
03-40143-NMG

MEMORANDUM & ORDER

GORTON, J.

Petitioner, Vincent Michael Marino ("Marino"), acting pro se, brings a petition for habeas corpus pursuant to 28 U.S.C. § 2255, along with several related motions challenging the criminal judgment entered against him by this Court on April 13, 2000. In a petition of 246 pages, together with amendments thereto, Marino raises over 50 separate arguments against the legality of the judgment of conviction and his present incarceration pursuant thereto.

I. Background

On April 4, 1997, Marino was indicted in the District of Massachusetts in a 40-count indictment in United States v. Carroza. CR-97-40009-NMG. The indictment charged him with 1) racketeering activity in violation of 18 U.S.C. §§ 2 and

Exhibit

1962(c) (Racketeer Influenced and Corrupt Organizations Act, hereinafter "RICO") (Count I), 2) RICO Conspiracy in violation of 18 U.S.C. § 1962(d) (Count II), 3) conspiracy to murder 14 individuals in aid of racketeering in violation of 18 U.S.C. § 1959 (Violent Crimes in Aid of Racketeering Activity, hereinafter "VICAR") (Count III), 4) using and carrying firearms in relation to the VICAR conspiracy in violation of 18 U.S.C. §§ 2 and 924(c) (Count IV), 5) narcotics trafficking conspiracy in violation of ←

→ 21 U.S.C. § 846 (Count XXX) and 6) using and carrying firearms in relation to the narcotics trafficking conspiracy in violation of 21 U.S.C. §§ 2 and 924(c) (Count XXXI). On the first day of ←
→ trial, the government moved to dismiss Count XXX and that was
→ motion was allowed.

On January 12, 1999, Marino was acquitted on Counts IV and XXXI, but the jury was unable to reach a verdict on the remaining charges. The Court declared a mistrial as to those counts and on March 12, 1999, Marino moved to dismiss them on collateral estoppel grounds. The Court denied that motion, and the First Circuit Court of Appeals affirmed this Court's denial. See United States v. Marino, 200 F.3d 6 (1st Cir. 1999).

On October 25, 1999, Marino was retried on the remaining charges. He was convicted on Counts I (RICO), II (RICO conspiracy) and III (VICAR conspiracy to murder) on December 22, 1999. With respect to Count III, the original charge identified

Appendix #2.

14 targets of the conspiracy but the Court and parties agreed that there was insufficient evidence with respect to one of those targets. Hence, the charge submitted to the jury identified only 13 targets.

The special verdict form returned to the Court indicated that the jury found that Marino had committed two racketeering acts: 1) the conspiracy to murder 13 people charged in Count I as a RICO violation and in Count III as a VICAR violation and 2) the drug trafficking conspiracy originally charged separately as Count XXX before it was dismissed. The jury also found that the government had not proven that Marino was guilty of an additional attempted murder in 1989.

On April 13, 2000, Marino was sentenced to a term of imprisonment of 420 months, a term of supervised release of three years and a \$150 special assessment. That sentence was affirmed by the First Circuit on January 14, 2001. See United States v. Marino 277 F.3d 11 (1st Cir. 2001).

After the Supreme Court denied his petition for a writ of certiorari, following the affirmance of his conviction on appeal, Marino filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 on June 24, 2003. His habeas petition was filed within the one-year limitation period prescribed by the statute.

Exhibit

Appendix #3.

Sentencing Transcripts

1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
vs.) CR No. 97-40009
)
)
VINCENT MICHAEL MARINO,)
aka Gigi Portalla)

BEFORE: The Honorable Nathaniel M. Gorton

DISPOSITION

United States District Court
Courtroom No. 2
595 Main Street
Worcester, MA 01608
Thursday, April 13, 2000
3:30 P.M.

Cheryl Dahlstrom
Official Court Reporter
United States District Court
595 Main Street, Room 514
Worcester, MA 01608-2076
Mechanical Steno - Transcript by Computer

Exhibit

1 THE COURT: You're advising him not to because he's
2 going to file a notice of appeal?

3 MR. SHEKETOFF: He still has a Fifth Amendment right
4 to remain silent. I don't want him to stand up and say -- in
5 other words, what he might say to the Court if he didn't have
6 a Fifth Amendment right and what he's sort of constrained to
7 say now could be different. I'm not saying they are but just
8 I think -- it's my advice to him not to exercise his right of
9 allocution. He acquiesces in that.

10 THE COURT: All right. Do counsel know of any reason
11 why sentence ought not to be imposed at this time?

12 MR. AUERHAHN: No, your Honor.

13 MR. SHEKETOFF: No, your Honor.

14 THE COURT: Please stand, Mr. Marino. Pursuant to
15 the Sentencing Reform Act of 1984, it is the judgment of this
16 Court that you, Vincent Michael Marino, are hereby committed
17 to the custody of the Bureau of Prisons, to be imprisoned for
18 a term of 420 months. This term consists of terms of 240
19 months on Count 1, 120 months on Count 2, and 60 months on
20 Count 3, all terms to run consecutively to each other.

21 Upon release from imprisonment, you are to be placed
22 on supervised release for a term of three years. This term
23 consists of terms of three years on each of Counts 1, 2 and 3,
24 all such terms to run concurrently.

25 Within 72 hours of release from custody of the Bureau

Exhibit

Date _____

☒ Cassette

Submitted for Transcription

Conversation (Date and Time)/

File #

Case Agent/Squad #

7/13, 7/24/ 7/31/89

28/P-B5-65373
SUBJ

☐ Below listed portion of tape should be transcribed: ☒ Full text of tape should be transcribed.

4 TAPES CONTAIN CONVERSATIONS BETWEEN [REDACTED]
AND [REDACTED] FROM 183B-BS-56631.
[REDACTED] 32C M # 566-A

Time span _____ minutes

Time span _____ minutes

SAC/ASAC (SAC/ASAC approval must be obtained when
APPROVAL full text of tape needs to be transcribed.)

Individuals involved in conversation and identifying/voice features:

Appendix # 3G.

EXHIBIT: A.

DEFENDANT'S
EXHIBIT

SEARCHED 30 INDEXED 30
SERIALIZED 30 FILED 30

OCT 14 1993

FBI - BOSTON

Exhibit

Continuation of FD-302 of [REDACTED]

6/22/89-3
On 7/12/89, Page 2

[REDACTED] stated that FRANK SALEMME, SR., upon his release from prison, approximately one to one and one-half years ago began shaking people down for money. DANA said that SALEMME informed LAFACE that he is now out and in control, and gets a piece of everything. DANA stated that SALEMME has ripped off the LAFACE organization for \$80,000.00 to \$85,000.00 in cocaine transactions. LAFACE had a meeting with SALEMME about this and SALEMME told LAFACE that he had no intention of repaying this money.

[REDACTED] said that things began to escalate in the spring of this year when SALEMME went to an auto sales and towing operation located near the Lynn Courthouse. [REDACTED] stated the JOHN MELE had a tow truck at this used car lot and was using this as a base of employment. MELE was involved with two other men, who [REDACTED] described as "big and fat" and had the surname LAFHEY. SALEMME came to the used car office and demanded a weekly payment from MELE to operate his tow truck in Lynn. MELE informed SALEMME that he was employed by LAFACE and that all connections had been made. SALEMME said that it would cost him or that his tow truck would disappear. [REDACTED] stated that the tow truck was discovered missing, and [REDACTED] believes that it currently is in Stoneham, Massachusetts.

[REDACTED] said that MELE reported all of this to LAFACE, as [REDACTED] was told of the story through both MELE and LAFACE and others within the organization. After this incident, LAFACE informed [REDACTED] that he met with JOE RUSSO and BOBBY CAROZZA, from Maverick Square. These men assured LAFACE that they were in control, and that they had the backing of New York. LAFACE decided that he would not pay SALEMME, and instructed his people to inform him of any attempted shakedowns.

[REDACTED]

Exhibit

Continuation of FD-302 of [REDACTED]

6/2/89-5

On 7/12/89-5

Page 3

[REDACTED] advised that after the shakedown with SALEMME in Lynn, [REDACTED] became aware of the fact that three individuals (WILLIAM "RED" BRADY; BILLY IERARDI (ph) and JOHNNY PEDDOTTA (ph) were now shaking down drug dealers in the East Boston, Revere and Winthrop areas. [REDACTED] stated that these three men were considered to be independent muscle, but now they are employed by SALEMME. These men have begun to muscle in on the LAFACE cocaine operation and are attempting to "rip off" deliveries of cocaine.

LAFACE has told [REDACTED] that he confronted SALEMME over this and accused SALEMME of hiding behind the Irish kid. According to LAFACE, SALEMME denied using BRADY, and said that "he could handle his own affairs and did not need the Irish mob to help him."

LAFACE has become increasingly concerned over his safety and the security of his cocaine operation. [REDACTED] said that in May or June of this year, he, LAFACE, MELE and [REDACTED] travelled Revere Beach Boulevard for over two hours in search of BRADY, IERARDI and PEDDOTTA. LAFACE had a cache of weapons, some of which included a .44 Magnum, .380 caliber, 9 millimeter. [REDACTED] had initially taken the weapons from a green house located on Leyden Street in the vicinity of 240. [REDACTED] believes that a girlfriend resided in an apartment at this location and it is utilized as a safehouse. The weapons were in a gym bag when transported.

LAFACE was also informed [REDACTED] that he is in possession of an automatic weapon (AK 47 type) and that JUNIOR ZIRPOLLO, aka Zip, from East Boston, was attempting to have it fitted with a silencer. [REDACTED]

Because of this problem between LAFACE and SALEMME, LAFACE has been very cautious and is attempting to ascertain the movements of RED BRADY, BILLY IERARDI and JOHN PEDDOTTA. LAFACE believes that these individuals are going to kill him and other members of his [REDACTED]. LAFACE is now on the offensive and actively gathering information on them. [REDACTED]

KEVIN CULLEN

Pants *Metro* on fire *B1* *Boston Globe 10-18-2011*



You've got to admire the FBI's chutzpah. Eight years after the bureau promised Congress it would never, ever, pull another Whitey Bulger, it has been caught red-handed pulling another Whitey Bulger, this time with a reputed gangster and suspected murderer named Mark Rossetti.

Rossetti, a suspect in at least six homicides, *<was used as an FBI informant for two decades,* ostensibly because he was a reputed capo regime in the Mafia in Boston, though, given the state of that fine fraternal organization, that's like being the captain of a sinking ship.

In the two months that have passed since the *Globe* revealed that the FBI was using Rossetti as an informant despite his violent record and had lied to the State Police about his informant status, the bureau has done nothing to answer the myriad questions raised by its actions. They just say no comment, hoping we'll all grow bored and go away.

Stephen Lynch, the congressman from South Boston, took part in those hearings eight years ago at which the FBI promised, cross-their-hearts-hope-to-die, that they wouldn't pull another Whitey Bulger. Lynch has asked his colleagues on the Committee on Oversight and Government Reform to hold a hearing on the FBI-Rossetti axis. This, after he met three weeks ago with three FBI officials at his Washington office. They told Lynch they were about to launch a review of the Rossetti case, then told Lynch they had spoken too soon: They hadn't received the go-ahead from above.

The foot dragging surprised Lynch.

"You would think the FBI would be hypersensitive to this sort of stuff, given what happened with Bulger," said Lynch.

You would think.

Lynch also filed a bill last week that would increase congressional oversight of informants. And he's hoping New York's congressional delegation might piggyback on it after recent revelations that members of the Colombo crime family were killing people while working as FBI informants.

FBI stonewalling makes the need for congressional intervention beyond Boston and New England imperative, which is why Senator Chuck Grassley's intervention is so welcome. Grassley is the ranking member of the Senate Judiciary Committee. He comes from Iowa and is a plain-speaking, get-to-the-point kind of guy.

Yesterday, he sent a letter to Robert Mueller, the FBI's director, asking some very reasonable questions: When did Rossetti become an informant? How much was he paid? When did the FBI become aware of Rossetti's criminal activity? What crimes were the FBI aware of? Was murder one of them? Did the FBI or the Justice Department's Office of Professional Responsibility conduct a review? If the FBI lied to the State Police about Rossetti being an informant, were any agents disciplined?

Grassley says he will wait for answers and, like Lynch, he's not going away until he gets some. As it reviews its options, the FBI might want to consider the prospect of a repeat performance of those congressional hearings eight years ago and what that did to its reputation and credibility.

The FBI employed similar tactics of delay and denial when the Bulger fiasco was first exposed in these pages in 1988. For a decade, it lied about using a reputed killer like Bulger as an informant until a federal judge named Mark Wolf made the bureau tell the truth.

The FBI can try the same thing with Mark Rossetti. It will ultimately prove futile, and the truth will come out.

And the FBI will find that, as with Bulger, putting off the inevitable only makes the final reckoning worse.

Kevin Cullen is a Globe columnist. He can be reached at cullen@globe.com. Follow him on Twitter @GlobeCullen.

Exhibit

OCTOBER 14, 1998

Exhibit

FBI agent paints a new scenario

Buckley: Mercurio not involved

By Lee Hammel
TELEGRAM & GAZETTE STAFF

WORCESTER — An FBI agent yesterday said in U.S. District Court that FBI informant Angelo "Sonny" Mercurio was not involved in the 1989 shooting of fellow mafioso Francis "Cadillac Frank" Salemme.

Special Agent Michael J. Buckley also said that "in my opinion, yes," Mercurio would have been indicted if he had participated in the shooting of Salemme at a pancake house in Saugus.

Last June, in another courtroom, Buckley's former supervisor testified that Mercurio had set up the Salemme shooting. Retired Supervisory Special Agent James A. Ring was then testifying before U.S. District Judge Mark L. Wolf in hearings on whether to dismiss charges against Salemme, the alleged head of the New England mafia, Robert DeLuca, an alleged mafia soldier; and Winter Hill gangsters Stephen "The Rifleman" Flemmi and John Martorano.

Ring, who was in charge of the FBI's organized crime squad in Boston in 1989, testified that he decided to keep Mercurio as an informant and investigate and indict him later.

NINE ON TRIAL

Buckley was testifying here yesterday in the trial of nine alleged members of a renegade faction of the mafia trying to wrest control of the New England mafia from Salemme and his associates. Buckley told W. Theodore Harris, lawyer for defendant Nazzaro "Ralph" Scarpa, that he first met Mercurio in 1994 and never discussed the Salemme shooting with him.

Buckley's testimony came as defense lawyers were trying to show that informants are given inducements that can lead them to lie in court. They attempted to bring into play allegations of FBI misconduct, but Judge Nathaniel M. Gorton quickly reigned that in.

Buckley told Worcester lawyer Brian J. Buckley, who represents defendant Eugene "Gino" Rida, that he has no knowledge of the FBI ignoring its policy of indicting even its own informants for committing serious crimes. But Gorton upheld the objections of Assistant U.S. Attorney Jeffrey Auerhahn to questions about retired FBI Agent John Connolly taking the Fifth Amendment rather than testifying in the Salemme-Flemmi hearings in Boston and about whether the FBI has investigated Connolly, Ring, and retired Supervisor Agent John Morris.

Morris, testifying in Boston under immunity from prosecution, has acknowledged accepting money from Flemmi and Winter Hill crime boss James "Whitey" Bulger.

Boston lawyer Martin T. Weinberg, representing defendant Michael Romano Sr., pointed out that Flemmi helped Salemme blowing up a car and seriously injuring the occupant, a lawyer. Salemme served 16 years for the crime, while Flemmi, an FBI informant, did no time for the crime. Under questioning by Auerhahn, Buckley said that both Flemmi and Mercurio currently are in jail. They are jailed on charges unrelated to the bombing of the lawyer's car or the Salemme shooting.

Mercurio has become notorious for providing the information that led to the FBI's bugging of a mafia induction ceremony in Medford in 1989. However, the identity of three others who provided information for the affidavit allowing the bugging has never been confirmed.

Yesterday, Buckley said that Bulger had not provided the information, but that he was unsure whether Flemmi had.

BUGGING

Buckley also testified about the FBI's bugging of a Dec. 11, 1991 conversation between Salemme and Gambino Family capo Natale Richichi in the Hilton Hotel at Logan International Airport. The 8-year-old tape was played in Gorton's courtroom last week, the first time it has ever been heard by a jury.

According to the FBI transcript, Salemme complained about Raymond "Junior" Patriarca, his predecessor as boss of the New England crime family. "I could see that when this thing that happened with me, he was scared to death," said Salemme, who was aligned with Patriarca in 1989.

"He wanted to resign, this (expletive) because they wanted him to resign... He said, 'What if they sanctioned this down in New York?'"

"(Expletive) if they did, you wouldn't be here."

Salemme complained to Richichi that instead of punishing Joseph J.R. Russo, the head of the renegade faction that allegedly carried out the hit on Salemme, Patriarca rewarded Russo by making him consigliere of the crime family.

"I said, 'what the (expletive) the matter with you?'" to Patriarca, who Salemme said "was scared to go to New York" where the mafia's nationwide ruling commission sits. Salemme, who had been hospitalized with gunshot to the stomach and leg, said, "I'm still laying like this, I took ... one of the tubes and both bottles and said I'll go down with you."

Salemme also complained of Patriarca, who later went to prison, "and this (expletive), now all he does is bad mouth me in the (expletive) can because I'm in this."

A2 TELEGRAM & GAZETTE WEDNESDAY, OCTOBER 14, 1998

NEW ENGLAND

Exhibit

Salemme, Stephen Rossetti, Mark Rossetti, Ralph Rossetti, Richard Devlin, Richard Gillis, Joseph Souza, Richard Floramo, Mark Prochilo, Joseph C. Cirame, Timothy Larry O'Toole, Robert Paleo, Robert Luisi, Jr., and Lonnie Hilson, in violation of Massachusetts General Laws, Chapter 265, Section 1, and Chapter 274, Section 7.

Racketeering Act A-2

a. On or about June 16, 1989, at Saugus, in the District of Massachusetts, the defendants,

ENRICO M. PONZO and
VINCENT MICHAEL MARINO, A/K/A GIGI PORTALLA,

along with others known and unknown to the Grand Jury, aiding and abetting one another, did attempt to murder one Francis P.

Salemme, and in such attempt did shoot at him with firearms, but did fail in the perpetration of said offense, in violation of Massachusetts General Laws, Chapter 265, Section 1, and Chapter 274, Sections 2 and 6.

b. On or about June 16, 1989, at Saugus, in the District of Massachusetts, the defendants,

ENRICO M. PONZO and
VINCENT MICHAEL MARINO, A/K/A GIGI PORTALLA,

along with others known and unknown to the Grand Jury, aiding and abetting one another, did assault one Francis P. Salemme, with intent to murder him, in violation of Massachusetts General Laws, Chapter 265, Section 15, and Chapter 274, Section 2.

Racketeering Act A-3

On or about March 31, 1994, at Boston, in the District of

Indictment

7

U.S. v. Marino,
CR-97-40009-NMG. (D. Mass/Worcester)

016

PART A. THE OFFENSE

Charges and Convictions

(A) On April 4, 1997, a 40 count sealed indictment was returned in Boston, Massachusetts, which named Robert F. Carrozza, Michael P. Romano, Sr., Anthony Ciampi, Sean Thomas Cote, Enrico Ponzo, Mark F. Spisak, John J. Patti, III, Eugene A. Rida, Jr., John M. Arciero, **Vincent Michael Marino**, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo, Anthony Allan Diaz, and Leo M. Boffoli with Conspiracy to Murder charges. **Marino** was specifically named in Counts 1, 2, 3, 4, 30 and 31.

→ (B) Count 1 charges that from June 1989 through December 1994, Robert F. Carrozza, Michael P. Romano, Sr., Anthony Ciampi, Sean Thomas Cote, Enrico Ponzo, Mark F. Spisak, John J. Patti, III, Eugene A. Rida, Jr., John M. Arciero, **Vincent Michael Marino**, Nazzaro Ralph Scarpa and Paul A. DeCologero, being employed by and associated with an enterprise, as defined in 18 U.S.C. 1961(4), did unlawfully, willfully and knowingly conduct and participate, directly and indirectly, in the conduct of the affairs of the Enterprise, which was engaged in and the activities of which affected interstate commerce, through a pattern of racketeering activity, as defined by 18 U.S.C. 1961(1) and (5). **Marino** was named in the following racketeering acts within Count 1:

Racketeering Act A-1 charges that from January 1994 through December 1994, Robert F. Carrozza, Michael P. Romano, Sr., Anthony Ciampi, Sean Thomas Cote, Enrico Ponzo, Mark F. Spisak, John J. Patti, III, Eugene A. Rida, Jr., John M. Arciero, **Vincent Michael Marino**, Nazzaro Ralph Scarpa and Paul A. DeCologero conspired together and with Christopher Puopolo and others to murder Francis P. Salemme, Stephen Rossetti, Mark Rossetti, Ralph Rossetti, Richard Devlin, Richard Gillis, Joseph Souza, Richard Floramo, Michael Prochilo, Joseph C. Cirame, Timothy Larry O'Toole, Robert Paleo, Robert Luisi, Jr., and Lonnie Hilson, in violation of Massachusetts General Laws, Chapter 265, Section 1 and chapter 274, Section 7.

→ Racketeering Act A-2(a) charges that on June 16, 1989, Enrico M. Ponzo and **Vincent Michael Marino** along with others aiding and abetting one another, did attempt to murder Francis P. Salemme, and in such attempt did shoot at him with firearms, but did fail in the perpetration of said offense, in violation of Massachusetts General Laws, Chapter 265, Section 1, and Chapter 274, Sections 2 and 6.

[Presentence Investigative Report]

Appendix #28.

Exhibit

Racketeering Act A-2(b) charges that on June 16, 1989, Enrico M. Ponzo and **Vincent Michael Marino** along with others aiding and abetting one another, did assault Francis P. Salemme, with intent to murder him, in violation of Massachusetts General Laws, Chapter 265, Section 15, and Chapter 274, Section 2. ←

Racketeering Act B charges that from summer 1993 through December 1994, Michael P. Romano, Sr., Anthony Ciampi, Enrico Ponzo, John J. Patti, III, John M. Arciero, **Vincent Michael Marino**, Nazzaro Ralph Scarpa and Paul A. DeCologero conspired with each other and with others to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 841(a)(1).

All above noted racketeering acts are in violation of 18 U.S.C. 1962(c) and 2.

(C) Count 2 charges that from June 1989 through December 1994, Robert F. Carrozza, Michael P. Romano, Sr., Anthony Ciampi, Sean Thomas Cote, Enrico Ponzo, Mark F. Spisak, John J. Patti, III, Eugene A. Rida, Jr., John M. Arciero, **Vincent Michael Marino**, Nazzaro Ralph Scarpa and Paul A. DeCologero conspired with each other, and with others, to participate in the conduct of the affairs of the Enterprise, which was engaged in and the activities of which affected interstate commerce, through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c). ←

(D) Count 3 charges that from January 1994 through December 1994, as consideration for the receipt of, and as consideration for a promise to pay a thing of pecuniary value, to wit, money, from an enterprise engaged in racketeering activity, and for the purpose of gaining entrance to and maintaining and increasing position in an enterprise engaged in racketeering activity, Robert F. Carrozza, Michael P. Romano, Sr., Anthony Ciampi, Sean Thomas Cote, Enrico Ponzo, Mark F. Spisak, John J. Patti, III, Eugene A. Rida, Jr., John M. Arciero, **Vincent Michael Marino**, Nazzaro Ralph Scarpa, Paul A. DeCologero and Christopher Puopolo conspired with each other, and with others, to murder Francis P. Salemme, Stephen Rossetti, Mark Rossetti, Ralph Rossetti, Richard Devlin, Richard Gillis, Joseph Souza, Richard Floramo, Michael Prochilo, Joseph C. Cirame, Timothy Larry O'Toole, Robert Paleo, Robert Luisi, Jr., and Lonnie Hilson, in violation of Massachusetts General Laws, Chapter 265, Section 1, Chapter 274, Section 7, and 18 U.S.C. 1959.

(E) Count 4 charges that from March 1994 through December 1994, Robert F. Carrozza, Michael P. Romano, Sr., Anthony Ciampi, Sean Thomas Cote, Enrico Ponzo, Mark F. Spisak, John J. Patti, III, Eugene A. Rida, Jr., John M. Arciero, **Vincent Michael Marino**, Nazzaro Ralph Scarpa, Paul A. DeCologero, Christopher Puopolo and others, aiding and abetting one another, in furtherance of the

[Exhibit]

Conspiracy charged in Count 3 of the indictment, during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit, conspiracy to murder, as consideration for the receipt of, and as consideration for a promise to pay a thing of pecuniary value, to wit, money, from an enterprise engaged in racketeering activity, and for the purpose of gaining entrance to and maintaining and increasing position in an enterprise engaged in racketeering activity, as charged in Count 3 of the indictment, did knowingly use and carry firearms, to wit, machine guns, firearms equipped with firearm silencers, firearms equipped with firearm mufflers, shotguns, handguns and a destructive device, as those items are defined in 18 U.S.C. Section 921, in violation of 18 U.S.C. 924(c) and 2.

(F) Count 30 charges that from summer 1993 to December 1994, Michael P. Romano, Sr., Anthony Ciampi, Enrico M. Ponzo, John J. Patti, III, John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa and Paul A. DeCologero conspired with each other and others, knowingly and intentionally to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 841(a)(1) and 846.

(G) Count 31 charges that in summer 1993 through December 1994, Michael P. Romano, Sr., Anthony Ciampi, Enrico M. Ponzo, John J. Patti, III, John M. Arciero, Vincent Michael Marino, Nazzaro Ralph Scarpa, Paul A. DeCologero and others, aiding and abetting one another, in furtherance of the conspiracy charged in Count 30 of the indictment, during and in relation to drug trafficking crimes, to wit, conspiracy to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 841(a)(1), all in violation of 21 U.S.C. 846, as charged in County 30 of this indictment, did knowingly use and carry firearms, to wit, handguns, in violation of 18 U.S.C 924(c) and 2.

(H) With respect to racketeering act b of Count 1, Count 2 and Count 30, the Indictment gives notice of the applicability of 21 U.S.C. §841(b)(1)(B), alleging that these counts involved 500 grams or more of cocaine.

(I) Marino, who was already in federal custody on unrelated charges (see Pending Charges section below), made his first appearance in U.S. District Court before the Honorable Charles B. Swartwood, U.S. Magistrate Judge, on April 17, 1997. Later that day, Marino was arraigned and pleaded not guilty to all counts. To date, Marino has remained in custody.

→ (J) On September 28, 1998, a trial commenced before the Honorable Nathaniel M. Gorton, U.S. District Judge, District of Massachusetts at Worcester in the above matter. On this date, the government ←
→ dismissed Count 30. On January 12, 1999, Marino was acquitted of

Presentence Investigative Report
of Vincent Michael Marino
14431-038.

Appendix #PSI.

Exhibit

Related Cases

(M) None.

Plea Agreement

(N) There is no plea agreement in this case.

Offense Conduct

(1) The following version of the offense was taken from the Statement of Facts submitted by the government.

Overview

→ (2) From approximately June 1989 to December 1994, the Patriarca Family of La Cosa Nostra, including its leaders, members, and associates, constituted an 'enterprise' as that term is defined in Title 18, United States Code, Sections 1961(4) and 1959(b)(2), that is, the Patriarca Family of La Cosa Nostra was an association-in-fact of individuals. The Patriarca Family of La Cosa Nostra engaged in a variety of criminal activities, including murder, extortion, the operation of illegal gambling businesses, travel in aid of racketeering, and drug trafficking, all of which fall within the definition of racketeering activity, as that is set forth in Sections 1959(b)(1) and 1961(1) of Title 18. Furthermore, the Patriarca Family of La Cosa Nostra was also engaged in, and its activities affected interstate and foreign commerce.

→ (3) In approximately 1989, a rift began to develop within the Patriarca Family, when a faction led by made members Joseph Russo, Robert Carrozza, and Vincent Ferrerra began to challenge the leadership of Raymond Patriarca and his faction, which included Francis Salemme. The rift widened in June 1989, when the Russo faction killed William Grasso, the Underboss of the Family, and attempted to kill Salemme.

→ (4) The attempted murder on Salemme occurred in Saugus on June 16, 1989, and was executed by Ponzo and **Marino**. Salemme, who was shot numerous times in the stomach, lower abdomen and the legs, suffered life-threatening injuries. Salemme subsequently became the Boss of the Family in 1991, and the factional disputes continued. (The defendant **Marino** was charged in racketeering act A-2 with participation in this attempt on Salemme. The jury did not indicate that the government had proven this racketeering act with respect to **Marino**. However, the government has advised that John Mele's testimony at trial provides a preponderance of evidence to connect **Marino** to the Salemme shooting.)

[Presentence Investigative Report]

Appendix #30.

Exhibit

Sentencing Transcripts

1

Showing 8 Offense Level Enhancements
For salemm attempt by preponderance of evidence

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs.

CR No. 97-40009

VINCENT MICHAEL MARINO,
aka Gigi Portalla

BEFORE: The Honorable Nathaniel M. Gorton

DISPOSITION

United States District Court
Courtroom No. 2
595 Main Street
Worcester, MA 01608
Thursday, April 13, 2000
3:30 P.M.

Cheryl Dahlstrom
Official Court Reporter
United States District Court
595 Main Street, Room 514
Worcester, MA 01608-2076
Mechanical Steno - Transcript by Computer

Appendix #33

Salemme
Enhancement

Exhibit

20

1 level on the first grouping of counts should not be 43. Is
2 that what you're arguing in Objection No. 4?

3 MR. SHEKETOFF: Yes, your Honor.

4 THE COURT: I deny that objection on the grounds that
5 I believe that the verdict rendered against this defendant in
6 Count 1 does, in fact, warrant the establishment under
7 Guideline 2E1.1(a) and, thereby, the related guidelines of
8 2A1.5 and 2A1.1, that the appropriate base offense level for
9 Count 1, RICO Act A-1, Count 2 and Count 3, grouped together,
10 is 43.

11 With respect to Objection No. 5, that relates to
12 Paragraph 25. And in this Mr. Sheketoff is arguing that the
13 defendant was either a minimal or minor participant in that
14 conspiracy. I don't find that he was a minor or minimal
15 participant. I find that he was a full participant in this
16 conspiracy and, therefore, deny Objection No. 5.

17 Objection No. 6 is simply mathematical as to
18 objecting to the numbers that would be different had I ruled
19 differently earlier, so that objection is denied.

20 With respect to Objection No. 7, it relates to
21 Paragraph 29, and that is the base offense level for the
22 second group, that is, Count 1, RICO Act A-2(a) and A-2(b),
23 namely, the attempted murder of Mr. Salemme.

24 The objection, apparently, Mr. Sheketoff, is that the
25 jury did not convict your client of the predicate act. Is

Appendix # 52

Salemme
Enhancement

Exhibit

1 that basically the objection?

2 MR. SHEKETOFF: Right. Well, that's the first
3 objection because the Probation Department seems to think that
4 -- well, it's hard to say, but, yes, the jury did not convict
5 him. We all know that. The question, then, is do you find it
6 by a preponderance of the evidence.

7 THE COURT: And that means if I believe, by a
8 preponderance of the evidence, Mr. Mele's testimony, your
9 client was involved in the Salemme shooting. Correct?

10 MR. SHEKETOFF: Yes.

11 THE COURT: Does the government wish to address that
12 objection?

13 MR. AUERHAHN: No, other than to say I believe his --
14 the evidence from Mr. Mele, as well as the corroborating
15 evidence, clearly establishes, at least by a preponderance of
16 the evidence, that he did, in fact, participate in that. And
17 the case law is clear that even acquitted conduct, which we're
18 not dealing with here -- not proven is not the same as
19 acquitted conduct -- the Court can find -- attribute with a
20 defendant doing a guideline analysis, and the Court should
21 with this particular predicate.

22 THE COURT: The Court does, in fact, find that this
23 defendant, at least by a standard of preponderance of the
24 evidence, did participate in the attempted murder of Mr.
25 Salemme in 1989; and, therefore, under the objection to

Appendix # 53

Salemme
Enhancement

Exhibit

22

1 Paragraph 29, to the base offense level established for that
2 group of crimes, is denied. And it is found to be 28
3 pursuant, again, to the Guidelines 2E1.1 and the related
4 guidelines of 2A2.1 and 2A -- yes, 2A2.1.

5 The next objection is No. 8, which is to Paragraph
6 30, and it objects because the defendant argues the injuries
7 sustained by Mr. Salemme were neither permanent nor
8 life-threatening.

9 Do you wish to address that further, Mr. Sheketoff?

10 MR. SHEKETOFF: No, your Honor.

11 THE COURT: Does the government wish to address
12 that?

13 MR. AUERHAHN: No, your Honor, other than, under the
14 application notes, it seems that the injuries Mr. Salemme
15 sustained would satisfy the requirements of the application
16 note.

17 THE COURT: Not permanent or -- were they permanent
18 or life-threatening or both?

19 MR. AUERHAHN: Life-threatening. As far as I know,
20 they are not permanent. We saw him here. He didn't seem to
21 be hobbling, for example, in the same way Mr. Cirame was.
22 They're life-threatening given the nature where he was shot,
23 how long he stayed in the hospital and such, and the number of
24 times he was shot at, you know, the number of bullets shot at
25 him as well.

Appendix #54

Salemme
Enhancement

Exhibit

1 THE COURT: The Objection No. 8 is denied. It is
2 found that the victim, Mr. Salemme, sustained life-threatening
3 injuries; and, therefore, a four-level increase to the base
4 offense level for that group of crimes is warranted under
5 2A2.1(b)(1)(A).

6 The next objection is No. 9, to the following
7 Paragraph No. 31, and that is an objection to the finding --
8 or the recommendation by Probation that a four-level increase
9 is warranted here because the offense -- the attempted murder
10 of Mr. Salemme -- involved the offer or receipt of something
11 of pecuniary value for the undertaking of the murder.

12 I have addressed this issue on many occasions before
13 today. But do you wish to address that in any further sense,
14 Mr. Sheketoff?

15 MR. SHEKETOFF: I just don't think there was any
16 evidence of it, your Honor.

17 THE COURT: Does the government wish to respond?

18 MR. AUERHAHN: Your Honor, as we've said before, the
19 purpose was to be in a position to collect envelopes. Even if
20 there was no direct evidence of envelopes being collected,
21 that was the intention. It doesn't have to be a shooting in
22 exchange for money. It can be the expectation of receipt of
23 money in the future.

24 THE COURT: The Court, as in the past, does find that
25 that element has been met, that there was a promise of some

Appendix # 55

Exhibit

Salemme
Enhancement

1 nature involved in the organized crime element of this crime;
2 and, therefore, the four-level increase is warranted pursuant
3 to 2A2.1(b)(2). Objection No. 9 is, therefore, denied.

4 Objection No. 10, again, is a mathematical one
5 relating to the numbers that would have otherwise been added
6 up had I ruled differently, and that objection is denied.

7 Objection No. 11 relates to Paragraph 36, which is
8 the base offense level for the third of the three groups, and
9 this was a conspiracy to engage in drug-related activities and
10 to -- drug-related activities.

11 The objection is, Mr. Sheketoff, that you're saying
12 that there was no evidence of the amount of drugs involved in
13 that count? Is that what you're objecting to?

14 MR. SHEKETOFF: Well, vis-a-vis my client, yes. In
15 other words, even if you're in a drug conspiracy with somebody
16 else, it's not enough to say, well, they dealt in X number of
17 grams.

18 The government's best case, it seems to me, is that
19 after the Northgate Mall meeting there became the conspiracy
20 charged in the indictment because they agreed to cooperate in
21 the sense that they would divide up not really territory but
22 time. And so I don't see how everything that Michael Romano
23 ever did is now attributable to my client.

24 THE COURT: How is the defendant accountable for more
25 than 500 grams, Mr. Auerhahn?

Appendix #56

Exhibit

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES FOR AN ORDER)
AUTHORIZING THE INTERCEPTION OF)
ORAL COMMUNICATIONS)

M.B.D. NO. 89-1015

CS-1	Mercurio
CS-2	Flemmi
CS-3	ShLAURENT
CS-4	DINATION
Imbruglia	

AFFIDAVIT OF SPECIAL AGENT WALTER J. STEFFENS, JR.,
IN SUPPORT OF APPLICATION FOR ELECTRONIC
SURVEILLANCE ORDER

I. INTRODUCTION

Walter J. Steffens, Jr., Special Agent, Federal Bureau of Investigation (F.B.I.), being duly sworn, states:

1. I am an investigative or law enforcement officer within the meaning of 18 U.S.C. §2510(7); that is, an officer of the United States who is empowered by law to conduct investigations of, and make arrests for, offenses enumerated in 18 U.S.C. §2516.

2. This affidavit is submitted in support of an Application of Special Attorney Diane M. Kottmyer, made pursuant to 18 U.S.C. §§2518(1) and (11) which seeks authorization to intercept for a period of thirty days oral communications made by, directed to and/or in the presence of JOSEPH A. RUSSO (a/k/a "Joe", "J.R."), ROBERT F. CARROZZA (a/k/a Bobby Carrozza, Bobby Russo), VINCENT M. FERRARA (a/k/a Vinnie), defined as principals, occurring at various and changing meeting places in the District of Massachusetts utilized by the above individuals with the intent to avoid the oral interception of these meetings.

3. Oral communications to be so intercepted concern offenses enumerated in 18 U.S.C. §2516, that is, conducting illegal gambling businesses and conspiracy to do so in violation of 18 U.S.C.

Exhibit

c. VINCENT M. FERRARA was born on April 5, 1949. He has a listed address of 1 Heather Lane, Sudbury, Massachusetts, Box 683. He was arrested, in 1969, for assault and battery with a dangerous weapon and again, in 1978, for unlawful possession of a firearm in a motor vehicle.

The criminal histories provided above for RUSSO, CARROZZA and FERRARA were obtained from the records of the F.B.I., which are based on the reports of various local, state and federal law enforcement agencies. In some instances, these records are incomplete, and may not reflect the final disposition of a charge or charges.

C. Information from Confidential Sources, Electronic Surveillance and Independent Investigation

1. The Racketeering Enterprise and Acts Involving Murder in Furtherance Thereof

9. A ^{Mercurio}confidential, ^{Mercurio}reliable informant hereinafter referred to as ^{Mercurio}(CS-1) has provided reliable information to law enforcement for two years. ^{Mercurio}(CS-1) has never been known to provide false or misleading information to the F.B.I. Information provided by this informant has been corroborated and utilized in a prior affidavit in support of an application for electronic surveillance in a United States District Court. Information obtained from the electronic surveillance corroborated information provided by ^{Mercurio}(CS-1), ^{Mercurio}(CS-1) has provided detailed information on the criminal activities of major organized crime figures and drug dealers. Additionally, ^{Mercurio}(CS-1) has provided highly specific information regarding bookmaking and loansharking operations which information has been determined to be accurate when corroborated by court authorized electronic surveillance and independent investigation. ^{Mercurio}(CS-1) will not testify against any of the subjects named in this affidavit for fear of reprisals.

Exhibit

10. ^{Mercurio} (CS-1) stated that as of August, 1988, Raymond J. Patriarca was the boss of the New England LCN and William Grasso of Connecticut was the Underboss. During August of 1988, ^{Mercurio} (CS-1) reported that Gaetano Milano of Springfield, Massachusetts, a made member of the Patriarca LCN Family, along with Frankie "Pugs" from Springfield, Massachusetts, a made member of the Genovese LCN Family, was coming to Boston to meet with JOSEPH RUSSO, ROBERT CARROZZA, VINCENT FERRARA, all Capo Regimes in the Boston faction of the Patriarca LCN Family, and soldier Angelo Mercurio. The Boston LCN members believed that Milano and Frankie "Pugs" were spying on them to report back to Billy Grasso because there was friction developing between the two groups over criminal operations within the LCN.

In August of 1988, ^{Mercurio} CS-1 advised that Frank Salemme had been made a soldier in the Patriarca LCN family and was now carrying messages back and forth between Patriarca in Rhode Island and the LCN in Boston. In addition, ^{Mercurio} (CS-1) also reported an allegation that Salemme was supposedly spying on the Boston LCN leadership for Patriarca.

→ By September 1988, ^{Mercurio} CS-1 advised that there seemed to be two factions gearing up for trouble within the Patriarca LCN Family.

^{Mercurio} Informant referred to one group as the Patriarca, Salemme, Grasso group and the other as being the RUSSO, FERRARA, CARROZZA group, the latter group all expecting to be indicted federally and the former group acting as vultures as if the others were already incarcerated.

By October 1988, ^{Mercurio} CS-1 advised that capos CHARLIE QUINTINA and Biagio DiGiacomo were believed to be lining up against FERRARA and his associates and that the relationship between FERRARA and QUINTINA was

Exhibit

particularly bad. FERRARA as of that point believed that the other faction was plotting to kill him.

By the end of November 1988, ^{Mercurio} CS-1 stated that the FERRARA, RUSSO, CARROZZA group was growing more frustrated with Frankie Salemme as they believed that Salemme was "coloring" the messages he was bringing back and forth from Providence to Boston to enhance his own personal position and to get power. He also stated that Salemme was carrying messages to Underboss Billy Grasso in Connecticut.

By late January 1989, ^{Mercurio} CS-1 reported continued friction between Salemme and RUSSO, FERRARA, CARROZZA and Mercurio, who believed that many of the "decisions" from Raymond Patriarca were being dictated by Frankie Salemme for his own benefit.

→ By early June 1989, ^{Mercurio} CS-1 reported that the previously described friction between LCN factions was increasing, that JOE RUSSO and his associates blamed Frankie Salemme for all their problems and that Charles Qunitina sided with Patriarca in these disputes. According to the informant, Billy Grasso and JOE RUSSO did not like each other, but he did not know why.

→ In late May 1989, ^{Mercurio} CS-1 reported that the friction between JOSEPH RUSSO, ROBERT CARROZZA, VINCENT FERRARA and ^{Informant} Angelo Mercurio versus Patriarca, Grasso, Charles Quintina (Capo Regime) and Francis "Frank" Salemme (soldier) continued to grow and that the Boston group was still in contact with Gaetano Milano and Frankie "Pugs".

On August 28, 1989, ^{Mercurio} CS-1 advised that the current LCN leadership, including Joseph A. Russo, Nicholas L. Bianco, Vincent M. Ferrara and Robert F. Carrozza, is still concerned about F.B.I. microphone surveillance and constantly takes efforts to avoid these interceptions.

ExhibitMercurio

According to this informant, LCN members, including Russo, Bianco, Ferrara and Carrozza, do not meet indoors at any regular locations to discuss LCN business, but will move outside and have such conversations while walking. If having a conversation inside, the LCN member will choose a meeting spot for the first time and not use that location again. When inside, radios and televisions will be turned up high to mask any conversation. Mutual security against interception is actively discussed among LCN leaders and members when planning a meeting or discussion. This subject has high priority.

11. A confidential Flemmi reliable informant, hereinafter referred to as Flemmi CS-2 has provided reliable information to law enforcement authorities for more than 7 years. Information provided by this informant has led to the arrest and conviction of more than eight individuals for the crimes of illegal gambling and loansharking in connection with a major LCN criminal enterprise. Information provided by this informant has been utilized in prior Title III intercepts authorized by United States District Court. During the course of this Flemmi's confidential relationship with law enforcement authorities, information he provided has been corroborated by independent investigation, other reliable Bulger + Mercurio informants and information obtained from court authorized electronic surveillance. Flemmi CS-2 has stated that he will not testify against the subjects due to fear of reprisals.

Flemmi
On September 22, 1987, CS-2 advised that the LCN had "tightened up"

and implemented practices designed to insulate them from law enforcement detection. JOSEPH A. RUSSO, VINCENT M. FERRARA and ROBERT F. CARROZZA, among others, will not use phones, will only meet in small groups, will avoid enclosed areas and will conduct business while walking around

Exhibit

Flemmi
outside. CS-2 advised that, at that time, Matty Guglielmetti was the contact for Raymond Patriarca.

On July 15, 1988, CS-2
Flemmi advised that Frankie Salenne was "with" Raymond Patriarca and along with Matty Guglielmetti was the individual Raymond Patriarca depended upon.

12. A confidential reliable informant hereinafter referred to as CS-3 has provided information on a confidential basis to Special Agents of the F.B.I. for over 5 years. Information provided by CS-3 has been corroborated through separate independent investigations conducted by Special Agents of the F.B.I. and through information that has been obtained through other confidential sources by the F.B.I. which is described elsewhere in this affidavit. CS-3 has never been known to provide false or misleading information to the F.B.I. CS-3 will not testify against any of the subjects named in this affidavit for fear of reprisals.

Information provided by CS-3 has been used in three other affidavits of the F.B.I., all of which were submitted in support of applications for the interception of oral and wire communications.

During 1988, CS-3 described Raymond Patriarca, Jr. as the Boss of the New England LCN family and William Grasso of Connecticut as the Underboss of this same family. CS-3 also described Matthew Guglielmetti, Jr. as a member of this crime family who operated as a messenger for Patriarca to other crime family members in Boston, Massachusetts and Connecticut. This informant has also described how Guglielmetti was specifically used to carry messages for the operation of the crime family between Capo Regime Charles Qunitina of Revere,

Exhibit

Massachusetts and Raymond Patriarca and William Grasso so that family leaders would not be observed by law enforcement meeting directly. This informant subsequently advised in August 1988 that Raymond Patriarca, Jr. was being visited in Rhode Island by Frank Salemme. By September, 1988 this informant advised that Frank Salemme was coming to Rhode Island to meet with Raymond Patriarca, Jr. and was taking messages back to Boston for Patriarca.

By January of 1989, this informant was reporting that Patriarca family Capos VINCENT FERRARA and JOE RUSSO had problems with an F.B.I. investigation in Boston and expected to be charged.

CS-3 also stated in late July of 1989 that he has personal knowledge that JOSEPH A. RUSSO walks outside to conduct LCN business for the purpose of avoiding electronic surveillance and that Nicholas L. Bianco, VINCENT M. FERRARA and ROBERT F. CARROZZA also employ this tactic as part of their total effort to avoid electronic surveillance.

CS-3 ?
Salemme
13. On June 16, 1989, at approximately 10:30 a.m., Francis P. Salemme, Sr.³ was shot as he walked through the parking lot of the International House of Pancakes at 1185 Broadway (Route 1) in Saugus, Massachusetts. Salemme suffered wounds to the abdomen and leg, but

³Salemme was convicted in 1973 for the attempted murder of John Fitzgerald, an attorney from Boston, Massachusetts. Fitzgerald was representing Joseph "Baron" Barboza, an LCN associate who cooperated with government prosecutions of various LCN members, including the successful prosecution of Raymond L.S. Patriarca, Sr., father of Raymond J. Patriarca, and former Boss of the New England branch of the LCN. The attempt by Salemme, to kill Barboza's attorney was done with the approval of the LCN. Salemme was released from prison in February of 1988. Upon his release from prison, Salemme assumed an active role in the Patriarca LCN. Three days before he was shot, Salemme was featured in a front page article in the Boston Herald as the rising star in the Boston LCN.

Exhibit

survived the attack. Although he was the victim of the assault and not the assailant, Salemme, through his attorney, declined to be interviewed by law enforcement personnel conducting the investigation of the shooting.

Witnesses to the shooting of Salemme reported that he was shot at by 4 men in a late model, medium blue, 4 door sedan. One witness reported that the license plate of the sedan was a Massachusetts plate, 801NRA. The vehicle was last seen leaving the parking lot of the International House of Pancakes and traveling south on U.S. Route 1. Approximately one hour later, a 1989 medium blue Dodge Dynasty, a four door sedan with Massachusetts license plate 801NRA, was recovered in a parking lot off of Route 99, approximately one and a half miles south of the crime scene. Investigation by Special Agents of the F.B.I. on June 26, 1989 determined that the Dodge Dynasty described above was owned by Thrifty Rent-A-Car, Edson Building, Harborside Drive, Logan International Airport, Boston, Massachusetts. The vehicle had been stolen, date unknown, from a lot where it was being stored. The lot is located in the Logan Airport complex.

14. On June 16, 1989, at approximately 9:00 p.m., approximately ten and one half hours after Salemme was shot, the Massachusetts State Police arrested Frank Imbruglia[?] of 1984 Maverick Street, East Boston, Massachusetts; Vincent M. Portalla a/k/a as Vincent M. Marino a/k/a Gigi, of 36 Grandview, Saugus, Massachusetts and 271 Fenow Street, Revere, Massachusetts; John Stornaivolo, of 15 Tuckerman Street, Revere, Massachusetts, and John Mele of 123 Patrick Road, Tewksbury, Massachusetts and 215 Harver, East Boston, Massachusetts. The four men were together, in Everett, Massachusetts at the time of their arrest.

Exhibit

They were charged with illegal possession of firearms and illegal possession of a controlled substance.

The Massachusetts State Police conducted a review of the items that were seized from Frank Imbruglia when he was arrested on June 16, 1989. The review was conducted on June 19, 1989. One of the items discovered was a slip of paper with the following words handwritten thereon:

"801NRA Dynasty Blue- 4 DR."⁴

On June 26, 1989, Special Agents of the FBI determined that Janet Imbruglia of 61 Eutaw Street, East Boston, Massachusetts, was an employee at Thrifty Rent a Car, Logan International Airport, Boston, Massachusetts. Subsequent investigation determined that Janet Imbruglia is the daughter of Frank Imbruglia. She has refused to cooperate with the investigation of the Salenne shooting.

15. Also on June 16, 1989, at approximately 3:00 p.m., the body of William Grasso, former Underboss of the Patriarca LCN Family, was discovered along the bank of the Connecticut River outside of

⁴ Approximately three weeks before Salenne was shot, on May 22, 1989, Special Agents of the F.B.I. conducted a surveillance of the Club Lastrada at 11 Maverick Square, East Boston, Massachusetts. At approximately 4:42 p.m., ROBERT CARROZZA was observed meeting with Frank Imbruglia and Mark Weddleton, of East Boston, Massachusetts. CARROZZA walked out of the club to converse with Imbruglia and Weddleton. The three men walked along nearby streets, including Bremen Street and Summer Street while conversing.

At approximately 4:57, the three men ended their conversation. CARROZZA returned to the club at 11 Maverick Square and went inside, while Imbruglia and Weddleton departed the area. Photographs of this meeting were taken by the Special Agents observing the meetings.

The unmarked social club at 11 Maverick Square, herein referred to as Club LaStrada, is a known LCN hangout and meeting place frequented by, among others, LCN Capo ROBERT CARROZZA.

Exhibit

Wethersfield, Connecticut. The subsequent autopsy determined that Grasso had been killed approximately 36 hours before his body was discovered, and that the cause of death was a single .38 caliber bullet fired at close range into the left rear portion of Grasso's neck.

16. During the evening of June 16, 1989, Special Agents of the F.B.I. conducted a surveillance of Louis Failla meeting, in a restaurant in Hartford, Connecticut, with ^{INFORMANT} John Castagna of Hartford, Connecticut; Louis Pugliano of Springfield, Massachusetts; (brother of Frank Pugliano), Salvatore D'Aquila of Middletown, Connecticut; and Gaetano Milano of Springfield, Massachusetts.

17. Subsequent to the attempt on the life of Frank Salemme on June 16, 1989, and after the murder of Billy Grasso, and prior to July 29, 1989, ^{Mercurio} (CS-1) furnished the following information:

The murder of Billy Grasso and the attempt on Frankie Salemme were planned and carried out by the JOE RUSSO faction of the LCN. Grasso was murdered by Gaetano Milano and Frankie "Pugs" and they were able to "set Grasso up". RUSSO, FERRARA, CAPROZZA set up the hit on Salemme. Inside the hit car were Lenny Senibaldi, Gigi Portella and two others from Portella's crew. Besides Frank Salemme, informant has heard that Charlie Quintina was supposed to be at the same meeting and murdered with Salemme. Because the hit on Salemme did not succeed and Quintina was not present, the RUSSO crew was now in trouble. The RUSSO faction used an ongoing dispute involving Lenny Senabaldi and a guy named Marco, who is associated with Billy Grasso, to lure Salemme and Quintina to the meeting.

18. In June of 1989, subsequent to the shooting of Frank Salemme and the murder of underboss William Grasso in Connecticut, (CS-3) advised

Informants
Mercurio ✓ CS1
Flemmi ✓ CS2
Dinafi?
SALAMME?

Exhibit

that Raymond Patriarca had learned that Salemme was scheduled to meet with capo VINCENT FERRARA and some of his people and that the meeting where the shooting occurred had been set up by LCN member Angelo "Sonny" Mercurio but that subsequent to the Salemme shooting FERRARA was sending word he had nothing to do with the shooting of Salemme or Grasso.

By early July 1989, this source advised that the "Providence" Patriarca LCN was aware of the fact that their own family member Gaetano Milano had been meeting with the Boston LCN faction in Maverick Square, Boston and that there was a relationship between these meetings and the murder of Underboss William Grasso.

By the latter part of July 1989, this informant reported that the "Providence LCN faction" now believed the following events caused the recent shootings within the Patriarca LCN family in Boston and Connecticut.

Raymond Patriarca, Jr., had given the "O.K." for capo VINNY FERRARA to be killed but FERRARA found out before the order could be carried out. FERRARA along with Capos JOE RUSSO, BOBBY CARROZZA and soldier Angelo Mercurio set up a strategy to kill underboss William Grasso and soldier Frank Salemme whom they felt were responsible for all the friction within the family. FERRARA, RUSSO and their associates secured the cooperation of LCN members Gaetano Milano and Louis Failla in Connecticut who killed William Grasso while the Boston Capos set up the murder attempt on Salemme which failed.

Also during this time period, CS-3 reported a very shaky peace existed between the Providence and Boston faction and that Patriarca, Jr. had made Nicky Bianco the family Underboss to replace Grasso and Boston Capo JOE RUSSO the Family Consigliere. These steps were made

Exhibit

known to members of the Patriarca Family at a large meeting of members on a Saturday in late July in East Boston at a private residence. Nicky Bianco reportedly told everyone at this meeting they wanted peace and harmony in the LCN Patriarca Family, but JOE RUSSO is making demands of Bianco and Patriarca, Jr. regarding the operation of the Family which have yet to be satisfied and as a result there is no real solution yet reached and the situation could again turn violent.

Also in July of 1989, (CS-3) reported that JOE RUSSO wants Raymond Patriarca, Jr. to make Gaetano Milano a Capo but Patriarca considers Milano a traitor and this will be a sore point between Patriarca and RUSSO. Patriarca does not want to reward Milano for participating in the murder of his Underboss.

On August 10, 1989, (CS-3) advised that Raymond Patriarca, Jr. did not appoint a Capo in Connecticut and that those members will report through (Matthew Guglielmetti) to Underboss Nick Bianco.

On August 28, 1989, (CS-3) reported that Raymond Patriarca, Jr. was upset with Nick Bianco, Underboss, and soldier Anthony St. Laurent for not attending a party in Boston on August 27, at Lombardo's which was attended by numerous Boston and Connecticut members.

On September 7, 1989, (CS-3) advised that JOE RUSSO has asked Raymond Patriarca to step down as Family Boss.

19. A confidential reliable informant, hereinafter referred to as (CS-4) has provided reliable information to law enforcement authorities for over four years. Information provided by (CS-4) has resulted in the arrest of more than one individual who was running an illegal gambling

Exhibit

operation affiliated with the organized crime element. (CS-4) also provided information which led to the capture of a fugitive from justice.

Additionally, (CS-4) has provided highly specific information relative to the criminal activities and meetings of major LCN figures which information has been corroborated by independent F.B.I. investigation. Information provided by this informant has been corroborated and utilized in a prior affidavit in support of a Title III application in United States District Court.

On August 2, 1989, (CS-4) advised that Capos VINNY FERRARA, JOE RUSSO, BOBBY CARROZZA and Soldier Sonny Mercurio were responsible for the shooting of Frank Salemme. This group claims that Salemme was trying to take over some of their extortion business and they needed to move on Salemme to protect their business after they were unable to get their problem resolved by Raymond Patriarca, Jr.

(CS-4) ^{DINATI} stated that after the shooting, Sonny Mercurio took off because it was he who set up the meeting with Salemme when Salemme was shot. FERRARA, RUSSO, CARROZZA and Mercurio are now looking to "finish off" what they started before they are indicted by the feds.

On August 10, 1989, (CS-4) advised that Raymond Patriarca, Jr. wants the problems to be settled by JOE RUSSO and Frank Salemme but Sonny Mercurio is against any peace settlement believing it can never work after what their group has done (referring to the murder of Grasso and the attempt on Salemme's life). According to (CS-4), Mercurio has the most to lose as it was he who set up the meeting with Frankie Salemme when he was shot.

INFORMANT
DINATI
CS-4
on 5/29/12

CS-1
FBI Informant
Mercurio

CS-3 and CS-4 Admits
that ^{CS-1} Mercurio set up Salemme

Exhibit

On September 6, 1989, (CS-4) reported that JOE RUSSO had been promoted in the LCN to either the position formerly held by Billy Grasso or another higher position but that he was really looking forward to force Raymond Patriarca, Jr. to step down as family Boss so he could take over the Family himself. (CS-4) further stated that Patriarca is concerned that if stepped down as boss, Frank Salemme would immediately be killed. Both Sonny Mercurio and JOE RUSSO are upset with the idea of leaving Salemme alive as Mercurio set up the meeting where Salemme was shot and RUSSO was the brains behind the whole move. Both RUSSO and Mercurio feel that Salemme cannot be trusted to forget the attempt on his life.

23. On June 23, 1989, (CS-2) ^{Flemmi} advised that Salemme had been inside the Pancake House with Charlie Quintina just prior to being shot and was in fact shot by the people he was supposed to be meeting with.

Salemme's meeting had been set up by JOE RUSSO and Lenny Senibaldi.

According to (CS-2) ^{Flemmi} Charlie Quintina was also supposed to be shot with Salemme. Salemme is waiting to coordinate his response to this attack with Raymond Patriarca and believes that RUSSO and FERRARA were behind his shooting and Grasso's murder.⁵

^{Flemmi} (CS-2) also stated that Salemme has sent word to Raymond Patriarca, Jr. that he and Billy Grasso were a "package deal" and that the "move" was engineered by FERRARA and RUSSO. Patriarca told Salemme to sit tight until he could put things together.

⁵ ^{MARCO} Mark A. Hildonen, who was interviewed by Special Agents of the F.B.I., stated that he, along with an individual named Charlie whose last name is unknown to him, was with Frank Salemme right before the
(Footnote Continued)

ExhibitFlemmi

On September 19, 1989, CS-2 advised that JOE RUSSO had put it on

CS-1 Mercurio Raymond Patriarca, Jr. to step down as Boss of the New England LCN

CS-2 Flemmi Family and they were awaiting a decision. Flemmi CS-2 stated that if Patriarca

does not step down, the Boston LCN will probably make a move on

Patriarca which will be sanctioned by the LCN in New York.

Informant
Flemmi

CS-3 St. Laurent
CS-4 DiNati
Or Imbruglia stated that the JOE RUSSO crew has been in touch with John Gotti, Boss of the New York Gambino Family, and that they have Gotti in their camp

on this matter.

21. On the afternoon of June 20, 1989, surveillance officers

observed Louis Failla and fellow Patriarca member John Castagna travel in Failla's 1986 Cadillac DeVille to the Ramada Inn on Washington Avenue in North Haven, Connecticut. Failla was then observed to exit his

vehicle and meet with a person identified by the surveillance

authorities as John Taddei. [John Taddei has been identified in past

investigations as a close associate of William Grasso and John Castagna, a member of the Patriarca Family who also operates in Connecticut.]

Upon returning to his motor vehicle, Failla was intercepted in

conversation with Castagna.⁶ Failla indicated to Castagna that he had

(Footnote Continued)

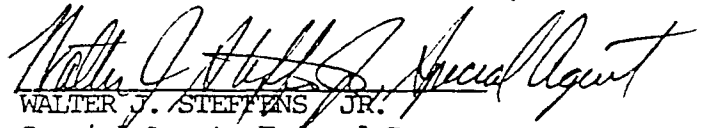
shooting. Hildonen's description of Charlie is consistent with the physical appearance of Charles Quintina.

⁶ Intercepted conversations of Louis Failla set forth or referred to in this affidavit were intercepted pursuant to the following orders of the United States District Court for the District of Connecticut:


a. On April 4, 1989, an order was issued by Chief Judge Ellen Bree Burns, United States District Court, District of Connecticut, which authorized interception of wire communications occurring over telephone numbers (203) 246-1863, (203) 246-2397, (203) 724-3149 and (203) 724-0686 and oral communications occurring in the 2nd floor of 3 South Street, Hartford, Connecticut.

(Footnote Continued)

feasible, in advance of any such entry and, in any event, as soon as possible after such entry has been effected.


WALTER J. STEPHENS, JR.
Special Agent, Federal Bureau
of Investigation

Sworn and subscribed to by me this 27th day of October, 1989.


UNITED STATES DISTRICT JUDGE



Federal Sentencing

14.12 SENTENCING TABLE

SENTENCING TABLE
(In months of imprisonment)*Exhibit*

Criminal History Category (Criminal History Points)

Offense Level	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
Zone A						
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
Zone B						
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
Zone C						
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
Zone D						
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

*RICO
Base
Level**130-162*

Salemme, 91 F. Supp. 2d 311

{91 F. Supp. 2d 311} In August 1997, the government requested that the evidentiary hearings on the motions to suppress not be conducted until the defendants filed a notice, pursuant to Fed. R. Crim. P. 12.3(a)(1), of any intent that they had to assert a public authority defense, and motions to dismiss the Fourth Superseding Indictment based on claims of immunity and other grounds. The government's motion was granted. Aug. 11, 1997 Order at P2.

On September 3, 1997, the defendants filed under seal their motion to dismiss, a sixty-three page memorandum, and two supporting affidavits of Anthony Cardinale, Esq., who was then counsel for Salemme and DeLuca. The grounds for the motion to dismiss included the contentions that: the government had engaged in systematic, outrageous misconduct in connection with the investigation of this case and thus violated defendants' rights to Due Process; dismissal was required as an exercise of the court's supervisory powers; there had been gross abuse by the government in failing to inform the grand jury of Flemmi and Bulger's status and activities as informants; that immunized testimony had been improperly presented to the grand jury; and illegally obtained electronic surveillance evidence had been presented to the grand jury. See Memorandum of Law in Support of Defendants' Motion to Dismiss All Pending Indictments (Sept. 2, 1997).

Cardinale's affidavit charged that Connolly had attempted to foment violence by telling him in 1989 that Salemme was planning to kill his then client Ferrara. Aff. of Anthony Cardinale, Sept. 3, 1997 ("Cardinale Aff., Sept. 3, 1997"). In addition, Flemmi filed a notice that as part of his defense he would assert that he was authorized by the FBI to engage in the acts now charged as crimes. Defendant Flemmi's Notice Under Fed. R. Crim. P. 12.3 (Docket No. 696). The defendants' submissions were, despite the government's objection, unsealed on September 10, 1997. *United States v. Salemme*, 985 F. Supp. 193 (D. Mass. Sept. 10, 1997).

On October 6, 1997, the defendants filed, under seal, an eighty-five page Factual Submission in Support of Defendants' Motion to Dismiss. This Factual Submission referenced and analyzed information defendants had received in discovery. The court did not grant the defendants' requests to unseal this document. Oct. 6, 1997 Order.

On October 22, 1997, the government filed, under seal, a ninety-nine page Opposition to Defendants' Motion to Dismiss All Pending Indictments, and attachments. The memorandum thoroughly addressed the law relating to virtually all of defendants' claims except Flemmi's contention that he had been provided immunity. The theme of the government's submission was, in essence, that the defendants were not entitled to a pretrial evidentiary hearing on their motion to dismiss and that their claims would at trial be proven to be unmeritorious.

Over the next several months, the court held a series of hearings concerning the motions to dismiss and other matters. 65 The court expressed the view that the defendants' claim that the case should be dismissed because of outrageous misconduct might not be viable as a matter of law, but their supervisory powers claim might be valid if certain facts were proven. Oct. 29, 1997 Tr. at 45-46, 58.

Exhibit

before being indicted. Ex. 166. Ring reviewed the 209 that included this information. Ring June 8, 1998 Tr. at 104. Mercurio's report of his intention to flee confirmed the information that Bulger had provided in September 1987. Ex. 165. The inserts in Mercurio's informant file indicate that in early 1989 he was frequently furnishing information to Connolly, including reports on information that was being provided by Anthony Cardinale, Ferrara's attorney. See, e.g., 209s dated 1/25/89 and 2/14/89. 48 When she became Chief of the Strike Force in February 1989, Kottmyer expressed to the FBI concern about the possibility that Mercurio would report on defense strategy, and about other issues, including whether Mercurio might assert an authorization defense. Kottmyer Aug. 13, 1998 Tr. at 66-70.

By May 1989, Ring realized that when Mercurio was indicted his dual status as an informant and defendant would present a difficult dilemma for the government. Ex. 170; Ring June 9, 1998 Tr. at 52-58, 91-99. As Ring understood it, Mercurio's involvement with his codefendants after their indictment would implicate their Sixth Amendment rights to the confidentiality of joint discussions of defense strategy, and dealing with this issue would entail the risk of disclosing that Mercurio was cooperating with the government. Id. Ring discussed this matter with Kottmyer and the Boston FBI's Principal Legal Adviser, 91 F. Supp. 2d 267 John Michael Callahan. Id. They decided that, in order to minimize the risks that they recognized, Mercurio should be closed as an informant before he was indicted and instructed not to contact the FBI unless he learned of planned violence or potential corruption of the judicial process. Id. Prior to May 8, 1989, Ring and Connolly told Mercurio of the prospective dilemma and the proposed plan for dealing with it. Ex. 170; Ring June 9, 1998 Tr. at 97. At that time Ring expected to close Mercurio as an informant in about two weeks and to tell him that had occurred. Ex. 170; Ring June 9, 1999 Tr. at 64, 97-98, June 22, 1998 Tr. at 71. On May 8, 1989, Ring wrote a memorandum to the SAC, Ahearn, describing the issue posed by Mercurio's potential dual status as informant and defendant, and the proposed plan for dealing with it that he had discussed with Kottmyer, Callahan, Connolly, and Mercurio. Ex. 170. Ring did not, however, receive a response to his recommendations from Ahearn before Ring left for vacation at the beginning of June 1989. Ring June 9, 1998 Tr. at 64. Thus, he did not before departing close Mercurio as an informant or tell Mercurio that he had done so. Ring June 22, 1998 Tr. at 71-72. Ring did, however, tell his colleagues, including Connolly, that he felt that the tensions in the LCN might soon explode into violence. Ring June 19, 1998 Tr. at 196. Ring's instinct was right. On June 5, 1989, Mercurio told Connolly that he, Russo, Carrozza, Ferrara, and "Spucky" Spagnuolo felt under pressure because of their anticipated indictments and were angry at Salemme, who was poised to take over after they were indicted, and Charlie Quintina, who had allied himself with Patriarca and Salemme. Ex. 185. Mercurio added that it was believed that Salemme, Quintina, and Grasso would kill Ferrara if they could set him up. Id. Thus, Mercurio explained, the Boston LCN was hoping to murder Salemme and those associated with him first. Id. As described in § II.28, supra, Flemmi provided Connolly with essentially the same information the next day. Ex. 37 (209 dated 6/6/89). On June 13, 1989, The Boston Herald published an article by Shelley Murphy headlined "Ex-con seen as Hub Mob's heir apparent." Ex. TTT; 49 Ring June 19, 1998 Tr. at 200-04. The article cites "law enforcement sources" and consists mainly of information that closely tracks the information that is included in 209s prepared by Connolly based on his discussions with Mercurio and Flemmi. Id.; Exs. 37 (209s dated 3/20/89 and 6/6/89), 185, 195.

More specifically, the article reported accurately that "local Mob leaders" Russo, Carrozza, Lepore, and Mercurio would soon be indicted. Ex. TTT. As Mercurio had told Connolly, the article stated that Salemme had been "made" a member of the Patriarca Family. Id.; Exs. 188, 191 (See also Mercurio 209 dated 8/18/88, # 60 in Mercurio informant file). The article went on to explain that Salemme was meeting frequently with Patriarca and, using the precise term that Connolly ascribed to Flemmi a week earlier, had Patriarca's "blessing" to take over the Boston LCN's loansharking and

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[Exhibit!]

gambling activities when the expected indictments were issued. Ex. TTT; Ex. 37 (209 dated 6/6/89). Moreover, the article reported that, as **Mercurio** had told Connolly, Salemme had also aligned himself with Quintina. Ex. TTT; Exs. 185, 188, 191. In addition, the article contained the accurate information that the FBI had recently {91 F. Supp. 2d 268} made Salemme the subject of a separate investigation. Ex. TTT; Ex. 185. In view of the foregoing, and the fact that the article was written while Ring was away from Boston on vacation, the court is persuaded that Connolly was a source for the article. The Boston Herald article may have inflamed the volatile and potentially violent situation that **Mercurio** and Flemmi had recently reported to Connolly. On June 16, 1989, three days after it was published, Salemme was shot, but not killed, and Grasso was murdered in Connecticut. June 5, 1998 Tr. at 5. In view of the government's objection that the issue of whether the FBI prompted the attempt on Salemme's life related only to the defendants' motion to dismiss based on outrageous government misconduct on which the court had not granted an evidentiary hearing, the court did not permit questioning concerning the motive for what the court now recognizes to be the leaking of highly confidential and provocative information by the FBI. Ring June 19, 1998 Tr. at 201-03. This ruling may have been a mistake. If Salemme had been murdered by the Boston faction of the LCN, the FBI would have been spared the necessity of developing a prosecutable case against him, and Flemmi and Bulger would have again received one of the benefits of their bargain with the Bureau--an enhanced opportunity to profit from the vacuum created by the decimation of the LCN in Boston. Flemmi Aug. 25, 1998 Tr. at 31. On June 27, 1989, **Mercurio** told Connolly that the Salemme shooting and the Grasso murder were planned and carried out by the Russo faction of the LCN. Ex. 187. **Mercurio** reported that Russo, Ferrara, and Carrozza had handled most of the details of the Salemme "hit." Id. The 209 records no reference to Mercurio's role in the shootings. Id. Ring returned from his vacation after the Fourth of July. Ring June 9, 1998 Tr. at 92, June 19, 1998 Tr. at 18. He then found that on June 9, 1998 Ahearn and ASAC O'Callahan had approved his recommendation that **Mercurio** be closed as an informant. Ex. 170; Ring June 22, 1998 Tr. at 72. The Grasso murder and Salemme shooting, however, caused Ring to revise his view on whether **Mercurio** should be closed immediately. Ring June 29, 1998 Tr. at 65-66, June 22, 1998 Tr. at 73. Maintaining **Mercurio** as a source had become especially important in view of the potential for more violence, among other things. Ring, June 9, 1998 Tr. at 66, June 19, 1998 Tr. at 19, June 22, 1998 Tr. at 73-74. Thus, after consulting Ahearn and O'Callahan, Ring decided to postpone closing **Mercurio** as an informant, although he still intended to do so shortly before **Mercurio** was indicted. Ex. 170; Ring June 9, 1998 Tr. at 64, June 19, 1998 Tr. at 20, June 22, 1998 Tr. at 73. On August 2, 1989, another informant who Ring regarded as highly reliable advised that **Mercurio played a central role in the Salemme shooting.** Exs. 188, 194, 237, 246; Ring June 16, 1998 Tr. at 55. The informant stated, among other things, that **Mercurio** had fled after the shooting because he had lured Salemme to the meeting at which the attempt on his life was made. Exs. 188, 194, 234, 246. The informant stated that Ferrara, Russo, Carrozza, and **Mercurio** were seeking to "finish off" what they started before they were indicted. Id. In addition, the informant reported that while Patriarca was urging Russo and Salemme to settle their problems peacefully, **Mercurio** was opposing that effort. Id. Ring believed that this information was true and that **Mercurio** had previously failed to inform the FBI of plans for imminent violent activity in which he was involved. Ring June 19, 1998 Tr. at 20, 254; June 6, 1998 Tr. at 6 (Under Seal); Ex. 164. Ring also recognized that there was an enduring threat of additional violence about which **Mercurio** would be knowledgeable because of his involvement. Ring June 19, 1998 Tr. at 19. As discussed, in § 11.6, supra, in 1989, the Attorney General Guidelines, which {91 F. Supp. 2d 269} were incorporated in the FBI Manual, required a special review process if an FBI field office wanted to keep an informant open after it learned that he had participated in a serious act of violence or any other serious crime. Ex. 274 (Under Seal), Manual § 108, pt. IV(C) (1-12-77); § 137-13(1)(C) (1-31-78); § 137-17(1)(G) (1-12-81); § 137-16(1)(G) (3-28-84); Summerford Sept. 16, 1998 Tr. at 62-67. In essence, the Guidelines required

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either that state or local law enforcement authorities be informed of the evidence concerning the informant's crime or that FBI Headquarters and the Assistant Attorney General be promptly consulted. Id. Murder and attempted murder are serious acts of violence. Summerford Sept. 16, 1998 Tr. at 65, 67. FBI Headquarters and the Assistant Attorney General should have been advised of the credible information that had been received concerning Mercurio's involvement in the Grasso murder and Salemme shooting. Id. at 157-58. Summerford Sept. 16, 1998 Tr. at 18. The Boston FBI, however, did not provide the required notification to Headquarters or the Department of Justice. Summerford Sept. 15, 1998 Tr. at 157-58. Rather, it arrogated to itself the decision to continue to utilize Mercurio as an informant despite the fact that it was believed that he had, while an FBI informant, been involved in murder and attempted murder. When Kottmyer later learned of the reliable report of Mercurio's involvement in the Salemme shooting she asked Ring whether it presented a problem under the Attorney General's Guidelines. Kottmyer Aug. 14, 1998 Tr. at 180-81. Ring told her that it did not. Id. 30. The LCN Induction Ceremony On October 29, 1989, the Patriarca Family conducted a ceremony at 34 Guild Street, Medford, Massachusetts, to induct new members as part of an effort to make peace between its Boston faction and Patriarca's loyalists, including Salemme, who was not present. The FBI bugged 34 Guild Street and recorded that ceremony. It was the first time that the FBI had ever overheard an LCN induction ceremony. The interception was perceived and later proven to be of vast value to the government in prosecuting members of the LCN and in publicizing the success of that effort. Flemmi and Mercurio were two of the four informants relied upon in the application for the court order that authorized the "roving" bug that was employed at 34 Guild Street. As described in the Conclusions of Law, § III.4, infra, although defendant DeLuca was among those intercepted at 34 Guild Street, the Supreme Court's recent decision in *Minnesota v. Carter*, 525 U.S. 83, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998), persuades the court that he does not have standing to litigate whether the electronic surveillance was obtained in violation of Title III or involved a violation of the Fourth Amendment. The recording of the LCN induction ceremony was, however, played for the grand juries which returned the indictments against Flemmi in the instant case. Dec. 18, 1997 Tr. at 35. Thus, the court has been required to decide whether that use of this evidence that Flemmi helped obtain violated any enforceable agreement which he had with the government. As described in § III.1.D. (3), infra, it does. In addition, the manner in which Connolly and Ring dealt with Mercurio concerning the ceremony is sufficiently distinctive to be probative of Flemmi's claims that he and Bulger, like Mercurio, were generally protected by Connolly and the FBI in return for their services as informants and, as part of that protection, were alerted to their imminent indictment so they could flee. In *United States v. Ferrara*, 771 F. Supp. 1266 (D. Mass. 1991), this court made findings of fact relating to the electronic surveillance conducted at 34 Guild Street. Those findings were based on a limited record. Kottmyer was the only witness, and the court accepted an affidavit {91 F (270)

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